Acta Sanctae Sedis

Acts of the Holy See

Holy See; Vatican

An English translation of the Latin edition
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[*Latin ed. p. 1*]

A COMPENDIUM, CONCISELY ARRANGED AND ILLUSTRATED, BY THE LABOR AND CARE OF PETER AVANZINI, ROMAN PRIEST, DOCTOR OF PHILOSOPHY, THEOLOGY, AND BOTH LAWS, namely: Legal and more solemn acts emanating directly from the Supreme Roman Pontiff; acts among those which can be made public under the law, whether they are Decrees, Instructions, Responses, or other similar matters; especially, expositions and resolutions of cases from various Sacred Congregations of Cardinals, contributing to the accurate understanding and observance of ecclesiastical law, concisely compiled through diligent study; and finally, other legal matters, by which those things which might present difficulty in the aforementioned acts, or which further contribute to the knowledge of existing law, are suitably illuminated: for the benefit of those who diligently seek to understand the laws of the Church, and who labor diligently in the governance of the Christian flock, or in cultivating the Lord's vineyard.

FIFTH EDITION.

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[*Latin ed. p. 3*]

PROGRAM. Since among numerous periodicals, one entirely lacks, which is written solely in Latin and concerns itself with reporting the useful acts of the Roman See, matters which can be both reported and made available for the benefit of many; and since we have learned that such a work, once begun, can be very useful; we have considered it proper to present this periodical in the form of a book, which, though not extensive or frivolous, but worthy of knowledge, contains acts drawn from the wise decisions of the Apostolic See, and presents those acts which, due to the nature of the subject matter, are involved, in such a way that they can be understood with little effort by those ecclesiastics who diligently devote

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themselves to the services of the Church. No one is ignorant who has spent some time in the Roman Curia, that among the immense volume of affairs constantly carried out in Rome, many are entirely secret, either because they touch the conscience of the faithful, or for other reasons; and therefore, such acts cannot be known, nor reported. Furthermore, there are other matters which, although they may be public or could be made public by law, if they were exposed in a scientific periodical such as this one, would scarcely be of any benefit to the reader. For those are concerned with knowing these acts, for whom they are particularly carried out. But beyond these, there are other matters, which, while demonstrating the wise practice of the Holy See, manifest the living law of the Church.

[*Latin ed. p. 4*]

4. PROGRAMME and illustrate, especially those authentic resolutions of doubts which are commonly issued by the Sacred Congregations of Cardinals. We intend, therefore, to present selected acts of this class. It frequently happens that, among such acts, there are found those which, due to their extensive subject matter, cannot be fully presented in the chronicle, nor can they be usefully summarized. Indeed, it often occurs that a question, which is not inherently very complex, becomes greatly expanded by the documents which are adduced from here and there to demonstrate the matter in dispute, and by the copious arguments of the defenders, with which the questions of law or fact are clarified. To avoid these inconveniences in presenting acts of this kind, we have deemed it advisable to follow this method. First, we will concisely explain the facts of the case, with diligent study, in such a way that neither clarity nor, much less, the truth of the facts is prejudiced. Having thus recounted the facts, we will likewise concisely present the main points of the arguments that have been debated, whether they are from the Office, that is, by the Prefect of the respective Secretariat or another appointed by the Holy Tribunal; or whether they are the defenses of the Advocates, appended at the end of the forms of the doubts, and the authentic resolutions of the same issued by the respective Sacred Congregation. After all of this, as the occasion demands, we will not omit to stir up the minds for a while, to draw attention to certain particular points, whether they are theoretical, which illustrate some principle of law, or practical, which concern the regular method of proceeding in similar cases. Furthermore, since it often happens that the cases themselves contain only certain legal principles, which are sufficient for the purpose of the case, but which are not generally well known, and which are otherwise useful to know, we will endeavor to explain them further in annotations appended to the cases themselves; and if these seem to require too extensive an explanation, their exposition will be given in a separate section, as if in an

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appendix, in which we will also treat them somewhat more fully.

[*Latin ed. p. 5*]

PROGRAM 5. We shall now discuss that which we shall judge to be suitable for inclusion, either in the acts presented in this book, or for presentation elsewhere. Whatever method is used to present such acts, we shall consistently observe this: in acts which have not been publicly published and promulgated by the Holy See, all true names of persons and places shall be entirely suppressed, and fictitious names shall be substituted in their place, or even alphabetical designations, *which shall not be the initials of the same places and persons that occur in the acts being presented; we shall be concerned only with presenting the essence of the event, in a manner similar to that in which moral cases are usually presented. It is sufficient that the day and year, the title and form under which the acts appeared, and the relevant Sacred Congregation, are indicated, so that they may be readily consulted when appropriate. These pertain to acts that originate from various Congregations of Cardinals. However, more solemn acts, which directly emanate from the Supreme Roman Pontiff, although widely disseminated through public periodicals, we shall not omit to include in this publication, especially those concerning ecclesiastical *usage*. It is of the greatest importance to have these acts collected together, so that when a suitable opportunity arises, they may be readily found. In summary, the following is what we promise, which you will find in the following outline: "EXTRACTS FROM THE ACTS PERFORMED AT THE HOLY SEE, CONCISELY PRESENTED AND ILLUSTRATED, OR 'Solemn and Legal Acts Directly Emanating from the Supreme Roman Pontiff': acts among those that can be made public, whether they are Decrees, Instructions, Responses, and other similar matters; especially the expositions of Causes and re-"

[*Latin ed. p. 6*]

6. PROGRAMME: Solutions, drawn from various Decrees of the Sacred Congregations, carefully compiled to promote a thorough understanding and observance of ecclesiastical law; and, finally, legal matters, by which those things which may present difficulty in the aforementioned cases, or which further contribute to the knowledge of existing law, are suitably explained: [These are] for the benefit of those who diligently strive to understand the laws of the Church, and in the governance of the Christian flock, or in the diligent cultivation of the Lord's vineyard.

We also wish to make it clear, lest anyone be misled, that this work is not supported by any public authority. Although the acts which are presented possess authority in themselves, if they conform to the originals (J), and although we will take great care to either arrange or reproduce them entirely, as their nature requires: nevertheless, the matters related in this work will not be able to claim any authority other than that which

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is usually granted to them when they are found in the private works of authors (1).

Regarding the authority with which the acts of the Holy Congregations are endowed, discussion will be provided in its proper place.

[*Latin ed. p. 7*]

7. S. R. C., CONGREGATIO CONCILII TRIDENTINI INTERPRETUM. ACTA VISITATIONIS SS. LIMINUM, 22 Februarii 1862. Sess. 22. Decretum, de observationibus in Sacris Missis. Compendium Facti. Episcopus A, in relatione status suae Dioecesis ad S. Sedem transmissa, haec exposuit: « Ducentae parochiae in hac Dioecesi extant, quae aliam filialem sibi adnexam habent, in qua parochus diebus dominicis et festis per annum secundam Missam celebrat: et circa hanc consuetudinem diversa dubia suboriuntur, super quibus declarationem necessariam a S. Congregatione humiliter expostulo.» Et primum animadvertere debeo, quod numerus fidelium iuxta has ecclesias commorantium valde varius est: in aliquibus sunt quinque vel decem, in aliis ducenti, imo et sexcenti. Distantia a matrice, modo ad milliarium non attingit, modo sunt duo tria aut quatuor milliaria. Valde difficile foret, etiam post exquisitam investigationem, definire utrum hae ecclesiae nunc filiales, fuerint aliquando ecclesiae matrices, seu verae parochiae.»

Quatuor igitur dubia proponebat S. Concilii Congregationi, quae antequam solverentur, rogatus est Episcopus, ut magis praecise referret de omnimoda deficientia Sacerdotum ac mediorum, quibus per alium celebrari posset in filialibus ecclesiis; et utrum ecclesiae modo filiales nuncupatae, dotem aliquam seu congruam distinctam a matrice haberent, perquisitis actis Curiae ac SS. Visitationum. A t, quae relata sunt, sufficientia non erant ad integram quaestionem singillatim definiendam, quae ingentem paroeciarum numerum complectebatur. Relatum enim est de magna et generica presbiterorum deficientia, eorumque redituum paupertate, qui dum prius ex decimis alebantur, deinde his subtractis, assignata est pro quolibet parocho certa pensio, indipendenter omnino a populorum numero, vel parochiarum.

(1) Hoc titulo indicari solent causae seu dubia, quae S. Congregationi solvenda ab Episcopis proponuntur, quando exhibent relationem status sive Dioecesis S. Sedi.

[*Latin ed. p. 8*]

8. CONCERNING THE REPETITION AND APPLICATION of the Mass, which are governed as desired. The Bishops, having arranged their doubts as written below, presented them for discussion. The Syon Discussion. REGARDING THE REPETITION OF THE MASS. — From the outset, the following principal points of law were presented to the Holy Congregation. First, a historical account of the discipline that has successively regulated

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this repetition of Masses was presented, citing chapter 3 concerning the celebration of Masses, in which Innocent III decreed: "Except on the feast of the Nativity of Our Lord, unless necessity dictates otherwise, it suffices for the priest to celebrate only one Mass in a day." Where the word "suffices" is used, it does not commend any particular suitability, but contains a true precept, as Benedict XIV also taught in the Constitution *Declarasti nobis*. As for what necessity Innocent III indicated, although Doctors have debated it, today, especially after this Constitution of Benedict XIV, it is understood (it was added) to be the case where a priest has two parishes, and he cannot be present in one of them, and the people cannot gather, nor can another priest be found to celebrate the Mass. A similar case is also considered to be the situation where the parish priest, although not serving two parishes, nevertheless governs two separate congregations that are far apart, and one of them cannot assist the priest celebrating the Mass, or even if there is only one church, which cannot accommodate the entire congregation at once. Outside of such cases of necessity, neither custom, even if very ancient, can justify the repetition of Masses, as the Holy Congregation decided in the case of Dertusen on August 20, 1768, and elsewhere. It was noted that, although there may be a general shortage of priests, this cannot be argued to constitute a true necessity in every parish. Furthermore, it was observed that the distance of the churches, now called "chapels," from the parish church extended from about one mile to three or four thousand paces, and that the number of faithful in many churches reached two hundred and six hundred, although in some there were only five or ten. Due to these particular circumstances, the response of the Holy Congregation in a similar case, proposed through the Summary of Petitions on January 12, 1847, in Lingonen, was presented. In that case, as well, the matter of the custom by which some pastors of souls repeated Mass...

[*Latin ed. p. 9*]

OF REPEATED AND APPLIED MASSES. 9. On that same day, there was present a certain community, consisting of approximately twenty persons, located about one stone's throw from the parish church. And the Sacred Congregation responded: "It should be written to the Bishop so that he may grant permission to celebrate the Mass twice, inasmuch as those circumstances, as specified by Benedict XIV in his Constitution, are present which require it; and in the case which the aforementioned petitioner proposes, (or in the second case), permission should be granted."

WHEN THE SECOND MASS IS NOT TO BE APPLIED FOR THE PEOPLE. Regarding the application of the second Mass for the people, the Resolution of the Sacred Congregation concerning the application of Masses in Lucen, dated March 12, 1774, was brought forward, in which a certain doubt was proposed: "Are parish priests who are in charge of two parish churches obligated, on Sundays and other feast days, to apply the Mass

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for the people in each church, either personally or through others?" The response was: "Affirmative, except for those parishes united by a full and extinguishing union, and it should be written to the Bishop according to the instruction." The instruction contained the following: "The Sacred Congregation has never doubted that parish priests are obligated to apply the aforementioned Mass for the people on each Sunday and feast day in each of the parish churches, whether they are equally principal, or subjectively joined and incorporated; while the application of only one Mass for the people takes place in those parish churches which are so united and joined and incorporated that, from two, one has emerged completely, with the extinction of the title of the other."

In the present case, although it could not be certainly determined from the foregoing what the nature of the union was, I nevertheless observed that there were indications that seemed to exclude a full and extinguishing union. Furthermore, it was added that if the parish priests were to repeat the Mass, it should be for the reason of necessity, and although the second Mass could be applied at their discretion, they could not receive any alms for this celebration; and this should also be said of any priest who has no care of souls, as was defined in the Decrees concerning Masses for the People, dated September 25, 1858.

[*Latin ed. p. 10*]

10 CONCERNING THE REPEATING OF THE MASS. AND RELATED QUESTIONS. I. "Whether this custom of celebrating a second Mass should be tolerated in all the aforementioned churches, where this practice has become so ingrained that the people even believe they have a right to demand it." II. "Whether the Parish Priest is necessarily obligated to apply the second Mass for the people, just as he does the first, or whether he is free to retain the application of the second Mass for his own use, with a stipend." III. "Whether the Bishop can grant permission to celebrate the second Mass in similar cases, and in places where such a custom has not yet taken root." IV. "Whether, especially during the harvest season, the Bishop can grant permission to celebrate the aforementioned second Mass, when many workers gather in one estate or village, who certainly would not hear Mass unless the Parish Priest celebrated it in that place, since another priest cannot be available to celebrate it."

RESOLUTION OF THE QUESTIONS.— The Sacred Congregation of the Council decided on February 22, 1862, to respond as follows: To I, with an affirmative judgment, at the discretion of the Bishop, without regard for the custom, and insofar as the circumstances of necessity concur, according to the form of the Constitution of Benedict XIV and the Declaration of the Sacred Congregation of October 14, 1843, concerning Masses for the People, of September 25, 1858. To II, the resolutions are found in the document of September 25, 1858. To IV, provision is made in the foregoing.

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The following is the declaration, in the very words in which it is found in the aforementioned document: "Regarding the requests of Your Eminence, which have been presented to the Most Holy Lord, We have, with the same, given to Your Eminence the responses that have also been given to other prelates, through this Sacred Congregation of the Council. It is for the Ordinaries to know and consider whether a true necessity truly compels a priest to celebrate two Masses, and otherwise, this repetition should not be used, except according to the conditions that they themselves impose, considering the population of the places and the scarcity of priests, and therefore, for the sake of true necessity, as is read in the Constitution of Benedict XIV, Declarasti, addressed to the Bishop of Huesca, in the year 1746."

[*Latin ed. p. 11*]

ON THE REPEATED CELEBRATION OF THE MASS, AND ITS APPLICATION. II i) and in his work, *De sacrificio Missae*, book 3, chapters 5 and 6. The matter, however, weighs heavily on the consciences of priests, and no permission is granted generally, as if it were a privilege to any priest; but for particular cases, and for reasons of necessity, it is examined by himself, who furthermore warns the pastors to whom he has granted the faculty of celebrating Mass again, on the same day, not to receive any alms or stipends from anyone, under any pretext, for that Mass, according to decrees previously issued by the Holy Congregation, but to apply it freely for the benefit of the people entrusted to them.

The resolutions which are found in Cameracen, by which the Holy Congregation decided to answer the aforementioned question, are as follows. In Cameracen, it was asked:

1. "Is a pastor who governs two parishes, and therefore celebrates Mass twice a day, obligated to apply both Masses for the benefit of both parishes, even if there is a lack of income?"

2. "Is a pastor who celebrates Mass twice on the same day in the same parish, absolutely obligated to apply both Masses for the benefit of the people entrusted to him, without receiving any compensation?"

3. "Are vicars or other priests who do not have the care of souls, if sometimes they celebrate Mass twice a day, as happens sometimes, either to ensure that a sufficient number of Masses are celebrated in the parish church, or so that hospitals, prisons, or monasteries do not lack Mass, obligated to apply the second Mass freely for the benefit of the people?"

4. "Is it permissible, and if so, how, to grant to pastors who celebrate Mass twice on Sundays and other feast days, that they may freely apply one Mass, and receive a stipend for it, in that case?"

5. "Is it permissible, and if so, how, to grant to priests who do not have the care of souls, regarding both Masses in that case?"

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The Holy Congregation of the Council, on the aforementioned day, responded:

To I: Affirmative.

To II: Negative, with a firm prohibition against receiving alms for the second Mass.

To III: Negative, insofar as they do not have the care of souls, with a firm prohibition against receiving alms for the second Mass.

To IV: Negative, and the Bishop should provide according to the form of the Constitution of Benedict XIV, "Concerning Oblations," § 8.

To V: Provided for in the third [resolution].

[*Latin ed. p. 12*]

12. CONCERNING THE REPETITION AND APPLICATION OF THE MASS. FROM ALL OF THE ABOVE, THE FOLLOWING MAY BE BRIEFLY SUMMARIZED: I. Outside of cases of true necessity, it is not permitted to repeat the Mass (1). II. The existence of this necessity must be recognized by the Bishop in each individual case, with the criterion or norm, as given by Benedict XIV in the Constitution *Declarasti* and in his work *De Sacrificio Missae*, book 3, chapters 5 and 6, always kept in mind (2). III. Once this necessity is recognized, the Bishop ought to permit this repetition of the Mass, not indeed generally and as if it were a privilege, but according to the recognized necessity, and also with appropriate conditions that must be strictly observed by the priests. IV. It cannot be alleged that a custom, however ancient, constitutes a title for legitimately repeating the Mass; rather, such a custom is more properly considered a corruption. V. Furthermore, it must never be permissible to receive an alms for a second Mass to be celebrated, by whomever it may be celebrated, nor can the title of poverty or lack of income be alleged for receiving such an alms (3). VI. Indeed, the parish priest is bound to apply the second Mass, as well as the first, gratuitously, on feast days, in united parishes, except in the case where the union of parishes is such that only one parish arises from it. (1) This exception does not include the feast of the Nativity, or where a privilege has been granted for repeating the Mass on the following day, or on the day of All Souls. (2) See Appendix I. (3) Therefore, those authors, even more recent ones, are mistaken who teach that outside of Italy, an alms can be received for a second Mass, when the revenues are meager, which are assigned for the proper performance of one's office; or by force of custom. They are also mistaken when they teach that outside of Italy, parish priests are not bound to apply Masses for the people, while these reasons are in force, and when they conceal the Constitution of Benedict XIV, which, as it is directly addressed to the Bishops of Italy, does not distinguish between Constitutions which are enacted for a specific province, so that a particular law is established therein, and those which, although directed to a

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single province economically, declare a common law. And in truth, the Sacred Congregation of the Council has consistently judged, according to this Constitution, in resolving the doubts that have arisen concerning the application of the Mass for the people outside of Italy; and the Sacred Congregation of Propaganda Fide has transmitted this Constitution to various parts of the world, as a law to be observed, as it sees fit. However, in this matter, a pretext has been raised by the Constitution of the reigning Pontiff, whom may God keep safe for a long time, which begins *Amantissimi Redemptoris*. Otherwise, it must be judged concerning the application of the Mass for the people when it is a question of mission territories in which parishes are not canonically erected. Concerning this matter, we will explain the doctrine accurately defined by the Sacred Congregation of Propaganda Fide, in its proper place.

[*Latin ed. p. 13*]

13. ALMS OF MISSES. May 23, 1861. ' Session 22. Decree concerning offerings made at the Holy Mass. Summary of prayers (1). In light of the resolution of the Sacred Congregation on September 25, 1858, as previously explained, which declares that alms cannot be received for the celebration of a second Mass, the Bishop N. presented the following to the Sacred Congregation: "In many parishes of our diocese, there exist foundations, commonly called 'primissarias' (benefices and endowments), which provide for the celebration of the Holy Mass in the mornings, on weekdays and on feast days, as well as on certain other days. Such foundations, due to the scarcity of funds and the lack of priests, often lack a dedicated priest. In order to, as much as possible, satisfy the intentions of the founders, the pastors, having obtained the faculty to say two Masses, on Sundays and feast days, say two Masses: the morning Mass and the High Mass for the people, and in both Masses, a homily or catechetical instruction is given, for which the pastors have hitherto received a certain remuneration from such foundations. There are also other pastors who say two Masses on Sundays and feast days, partly in the parish churches and partly in the chapels, because moral necessity demands it. Not a few pastors travel to distant churches, along often rough roads, in summer heat, cold, and snow, and there they impart Christian instruction. The question is therefore: I. Whether pastors who, in order to satisfy the intentions of the founders, say two Masses on Sundays and feast days... (1) *Summaria precum* is a certain formula used by the Sacred Congregation when indicating that the matter does not concern a serious doubt to be formally resolved, or a contentious case (for these are treated with a different formula, as you will see in the files, examples of which you have in the preceding and following cases), but rather concerns prayers presented to the Roman See, either to resolve a minor doubt, or, as is often the case, to obtain a favor, which involves some difficulty, such as the existence of reasons that may or

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may not warrant the granting of the favor, or the manner in which prayers may deserve to be heard. Since these matters are presented and treated briefly, such cases are called *summaria precum*. These brief summaries have been printed in recent years; previously, the Secretary would explain these matters orally in the Sacred Congregation. When such cases are cited, it is necessary to distinguish them from others by adding "by summary of prayers."

[*Latin ed. p. 14*]

II. OF ALMS RECEIVED FROM MISSES. It is understood that those who found chapels, and those who apply for positions as chaplains, may receive a salary from the chapel fund, for their particular work.

III. Whether Parish Priests, who, due to circumstances, celebrate Mass twice on Sundays and feast days, either in the parish church or in a dependent chapel, and at the same time impart Christian instruction, may receive a fixed annual salary from the parish, for their particular work and industry.

Discussion: "Optical."

THOSE THINGS WHICH OPPOSED THE AFFIRMATION. It was noted that, according to the office, it is forbidden for Parish Priests, even if they have the faculty of celebrating two Masses, to receive an alms for the second Mass, as the Sacred Congregation of the Council defined in the cited document, *Camerae*. Masses for the People, and elsewhere, decreed this especially in Vintimilien, on December 19, 1835. Furthermore, a certain response was brought forward, given by the Sacred Congregation in Brixen, on March 3, 1855, by the Most Reverend Prefect. For in that diocese, a custom had prevailed whereby the Parish Priest was remunerated by certain pious sodalities or by the officials of the church fabric, with a particular alms for a Mass celebrated or said on Sundays or feast days by order, and sometimes without any special application. Hence, the Bishop inquired whether this practice, where it is established by an ancient custom, could be tolerated, at least for those days on which the alms is offered without a determined obligation. However, the Sacred Congregation judged that the custom, according to the explanation given, should be condemned, and that the constitution of Benedict XIV, *Cum semper oblatas*, should be observed.

THOSE THINGS WHICH WERE ADVOCATED. However, it was observed that, with regard to the case proposed, if the alms is not received for the reason of celebrating or applying for a second Mass, but by the title of remuneration for special work and industry, it should be determined whether the Sacred Congregation should decide whether the prohibition mentioned above also includes that which is commonly received under such a title. Nor did the argument presented in Brixen seem to be an objection, in which the case was not of a second Mass, but of a parochial Mass,

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and the alms was received for the celebration of that same Mass. On the contrary, the Sacred Congregation of Rites, under the title of remuneration for special work, permitted certain Parish Priests, who, due to a pressing necessity, traveled repeatedly to places distant from the parish church, to receive a certain stipend. Monasterien, June 11, 1845.

[*Latin ed. p. 15*]

ALMS OF MISSES. 15. RESPONSE. The Holy Congregation of the Council, on May 23, 1861, in this matter, after considering the summary of prayers, decided that it is permissible, at the prudent discretion of the Bishop, to allow a remuneration, considering the labor and inconvenience involved, excluding any alms given for the application of the Mass. Therefore, it is understood that, for external reasons alone, namely labor and inconvenience, some remuneration may sometimes be permitted, while the prohibition of receiving anything as alms for the application of the Mass remains in force.

MARRIAGES. M 27 Jvg. 1864. Session 24. Chapter 6, concerning the Reform of Marriages. Summary of the case. Although Caia, the wife of Titus, had been legitimately expelled from the marital home; it had nevertheless been granted to her that the children who remained under the authority of Titus, might occasionally visit their mother. This circumstance was exploited by the mother to benefit her daughter, Agnes. For, while Agnes, being unmarried, resided in her father's home in the city of A, and occasionally visited a certain house for the purpose of socializing, it happened that a certain Sempronius, having seen her, was inflamed by love for Agnes. Then, Titus, the father of the young woman, and the young woman herself, Agnes, after Sempronius had repeatedly urged them to arrange a marriage, did not refuse on several occasions; until Sempronius, realizing that this legitimate path was closed to him, sought to open another, quite unheard of, path for himself. Indeed (as we gather from the records), when Caia, Agnes' mother, was staying in a certain coastal town, B, far from the city of A, for reasons of health, and Titus, Agnes' father, had also departed from his city of A at the same time, for reasons of his office, Agnes went to that place, B, accompanied by a female tutor and another younger sister, and visited her mother, who was staying in a public inn. She remained there (1) We will constantly refer to the titles of the cases as they are found in the acts of the Holy Congregations, so that they may be cited for the purpose of the case at hand. The titles are usually placed next to the SS. CC. according to the practice of the SS. CC., because the word "Case" is understood.

[*Latin ed. p. 16*]

16. NULLITY OF MARRIAGE. AGNES ABDUCTED. Agnes, for several days, was persuaded by her mother, under the pretext of a better dwelling, with a deceitful intention, that she had found a more convenient home

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for her daughter in the same region, which she presented as being ready for Agnes. In truth, Caia, the mother, together with the aforementioned governess, led Agnes to a more remote house, and upon entering, first Caia, and then the governess, feigning reasons for departure, left, leaving Agnes alone there, as if in her own home. Under these circumstances, unexpectedly, Sempronius appeared, who, terrifying the then-frightened Agnes, revealed to her that she was found in his house and under his power. Agnes was forced to remain in Sempronius's remote house for part of the day and the entire following night, during which, as she herself testified, she cried out and attempted to flee, but in vain. The following day, albeit late, the governess returned, to whom Agnes promptly declared her desire to return to her father's house that very day. However, the mother (who, from what has been said, appeared to be acting in concert with Sempronius), before the daughter departed, together with the governess, still terrified the girl, and persuaded her not to return to her father's house, lest she incur her father's wrath, due to what had happened; but rather, to go to a certain public place frequented by various people in the same city A, so that there it might be more conveniently considered what should be done next. It should not be passed over in silence that Sempronius, before this, had intended to abduct Agnes to another distant place, so that he might more freely contract marriage with her; but this plan had not come to fruition, because he had refused to give his name and the name of the girl to be taken to the captain of the ship that was to transport them. Therefore, Agnes yielded to the importunate persuasions of the mother and the governess, and on the same day, Agnes and the governess set out on a road paved with iron, to return to their city A. But when they arrived at a certain station, Sempronius appeared again, entering the same carriage in which Agnes was sitting, which so terrified Agnes that she cried out loudly, so that the coachman intervened and ordered Sempronius to leave the carriage. Which Sempronius then did, urged on by another man, C, who was also sitting in the carriage.

[*Latin ed. p. 17*]

NULLITY, MARRIAGE RX r.kWTV FUP-TÜS. 17 Here, it is fitting to present the testimony of the aforementioned man C, who swore an oath and testified as follows: "I firmly know that on a journey from the coastal town of B to the city of A, I encountered a young girl who was weeping, accompanied by another young woman. It happened that we found ourselves in the same carriage. At the next station, a young man named Sempronius arrived and sat in the carriage in which we were. At his appearance, Agnes uttered such cries that the coachman came to investigate what was happening. The young woman, a companion (educator) who seemed to have authority over Agnes, made me believe that she was trying to silence Agnes. She suggested to Sempronius that he would do better if he entered another

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carriage to remove the cause of Agnes's distress. He himself secretly spoke to me, recounting how he had seduced the young woman so that he might be loved by her. He himself asked me to take care of her (Agnes) and to prevent her from returning to her father. Finally, the young woman, the companion (educator), told me that she was a participant in the secret and the plan... I took Agnes and her companion to the inn of Diversorum D., where I myself was accustomed to stop. Thus, Agnes arrived at the public inn of Diversorum D., by the persuasion of man C, and also of the educator who was a participant in Sempronius's plans. These are the further events that occurred at this inn. A room was assigned to Agnes, at the request of the educator, to which access was only granted through the educator's own room; and it had windows that looked not onto the public street, but only onto the courtyard inside. Therefore, no means of egress was open to the girl without the permission of the educator, who guarded her so carefully and closely that whenever she went out of the house, the educator would lock and secure the room with keys. Agnes remained at this inn for three weeks, during which time she went out twice, but always accompanied by the educator; first, when she went to the confessional, and second, to consult with a certain lawyer. However, this second departure was firmly forbidden to Agnes by the educator. Therefore, they began to argue and cry out so much that the servants of the inn came, and with their help, Agnes was able to leave. She went to the lawyer, who lived not far from the inn (accompanied by the educator), and explained her situation to him, volume I, case 1.

[*Latin ed. p. 18*]

I8. The marriage, having been forcibly arranged, caused distress, and she demanded to know what was expected of her. After consulting with the law, he replied that there was no other remedy for this evil except marriage, and he sent a letter to Titius, Agnes' father, in which, having recounted the events, he concluded that marriage was necessary. Titius, indignant, never approached his daughter, nor did he allow her to look at him again; however, after considering the matter and with the advice of others, although unwillingly, he consented to his daughter's marriage to Sempronius; and indeed, for the reason that it seemed to be the best course of action for his daughter's future. The news of this event spread widely, and the actions of Sempronius, as it was said, were made known to the public through the public gazettes. Meanwhile, Sempronius did not fail to visit the aforementioned Diversorum, and to converse with the governess, whom Agnes, either repelling her herself, or finally, reluctantly, received. Thus, Agnes remained in that public inn, from which she had only gone out before, under the authority of the governess, under the care and mandate of Sempronius, and realizing that she had only two options remaining: the monastery or marriage with Sempronius, she ultimately chose the latter,

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because she knew that she lacked a religious vocation. Therefore, with everything prepared, Agnes finally went to celebrate her marriage; and it began in such a way, with the parish priest present, that it seemed not to be a wedding, but rather a funeral. Agnes, sad, performed the outward signs of consent, and her father, who had not even deigned to look at his daughter in this act, almost seemed astonished by the very act itself, in the manner customary in that region. On the same day, Sempronius, taking Agnes, his wife, with him, began a long journey; and for almost four years, during which they lived together, although, as it was said, they were averse to each other, they traveled through various distant regions, until, on one occasion when Sempronius was about to embark on a new journey, Agnes, feigning illness, managed to separate herself from her husband; and as soon as he departed, she rushed to her father, and, with his encouragement, entered a monastery. As a result of this, Sempronius sought and obtained a divorce; and Agnes, not content with this, insisted first with the Curia, and then with the Holy See, for a declaration of nullity of the marriage. Thus, a process was carried out in the Curia according to the form prescribed by the Constitution of Benedict XIV.

[*Latin ed. p. 19*]

NULLITY. MARRIAGE OBTAINED BY VIOLENCE. 19 With mercy, and this transmitted to the Sacred Congregation, the case discussed was under the doubt: whether the marriage was null in this case. Synopsis of the Discussion. DEFENSE OF THE MARRIAGE BOND. We shall consider only the principal points which were copiously and learnedly argued by the defenders. The defender of the marriage bond, maintaining that this marriage was entirely valid, sought to demonstrate that it could not be declared invalid, neither on the grounds of violence and fear, nor on the grounds of abduction. Regarding the first point, he observed that Agnes had not been induced to enter into marriage by any external cause, neither by physical violence, nor by moral coercion, that is, by threats and grave fear. He argued that, for a marriage to be null on this ground, it must be shown that the object of the fear was a grave harm, and that the one instilling the fear could, or at least was believed to be able to, carry out the threats, and that these threats could not be easily avoided by recourse to superiors, parents, or friends; none of these conditions, he maintained, were met in this case, since Agnes, through her own choice and after considering the matter, entered into the marriage for her own benefit. Furthermore, arguing to exclude abduction as an impediment, in addition to other points noted in the facts, and citing the doctrine of the authorities, which holds that two things must concur to constitute the impediment of abduction, namely, the woman's resistance and the physical abduction of the same woman from place to place by the abductor, he sought to demonstrate that both of these elements were lacking in this case. The violence on the

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part of the man was lacking, since Agnes, with the consent of her mother and educator, initially entered the home of Sempronius, and it was not Sempronius who used force against Agnes, to transfer her to his own home. Therefore, he argued that the initial act of abduction was lacking, which must always be considered in these cases. Sánchez L 7, disp. 13, n. % on marriage. Furthermore, he continued, even if the mother of Agnes, as the representative of Sempronius, induced her daughter by deceit to go to the man's home, it would not constitute abduction, because the treatises on the validity of marriage state that, in this case, cited authorities, the concept of abduction...

[*Latin ed. p. 20*]

2) NULLITY. MARRIAGE OBTAINED BY ABDUCTION. "It is necessary. He who had not achieved the effect of the marriage contract with the father, achieved it with the mother. But, even admitting, for the sake of argument, that the beginning was by abduction, he considered this marriage to be purified, especially because the woman had been separated from Sempronius' power, and remained free in a safe place. He argued that this occurred, first, on the journey where she shared a common carriage with others, in which she was even able to expel the man from her sight; second, in her city, which she freely visited; third, in an inn, which she freely chose in order to avoid the father's anger, in which she shook off the yoke of the governess as often as she wished, and so on, until she approached a jurist, etc. Furthermore, he did not observe any force, either physical or moral, to have intervened in the very celebration of the marriage, because both Agnes' father was present, and she herself freely gave signs of consent. Finally, he proposed the doctrine of the canonists, who teach that a four-year cohabitation is more than sufficient to ratify a marriage, whenever it had been contracted invalidly through force and fear. Indeed, such a long period of shared life induces a presumption of law that the woman freely consented. Moreover, since the marriage was celebrated according to the Tridentine form, he considered the conjugal acts themselves to be sufficient to revalidate it, even without any other external form; especially since, throughout the entire four years, Agnes never complained about the marriage bond.

DEFENSE OF AGNES FOR THE NULLITY OF THE MARRIAGE. — On the contrary, the woman's advocate argued to demonstrate the nullity of the marriage, especially due to abduction. He pointed out that Agnes had been taken from place to place, and that abduction is an impediment, even if the woman consented to the abduction. Indeed, when there are no prior discussions about entering into marriage, or betrothals, if a woman, against those under whose power she is, is voluntarily taken away, this will is presumed to have been extorted by fraud and machinations of the man, and therefore, an injustice is committed, both against the woman herself

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and against those under whose power the woman is; thus, the reason for abduction is verified. He confirmed this doctrine with the authority of Cardinal De Luca, part 2, discussion 5, on marriage, paragraphs 10 and following, and of others. In particular, the following resolutions of the Holy Congregation of the Council: "Since the question had been proposed to the same Congregation: whether those who abduct women who consent to the abduction are included, with regard to punishment and the prohibition of marriage, by the decree of the Council of Trent, chapter 6, session 24, on the reform of marriage..."

[*Latin ed. p. 21*]

NULLITY OF MARRIAGE OBTAINED BY ABDUCTION. 21. The Congregation, having heard the opinion of the jurist, (i) on January 24, 1608, decided to respond that "the Council should proceed even if the woman is willing, provided that she was abducted according to the terms of civil law." (2) Furthermore, the following case was presented to the same Holy Congregation: "Felix de Ga" gliarda, a layman, associated with ten or twelve armed men, abducted Orsetta, the daughter of Clement Thealdjni, who was living in the house of Angelo Masys, and under his tutela, although she consented to this. He then contracted marriage with her. Now, Angelo claims that Felix, in the constitution and assignment of the dowry for the aforementioned Orsetta, is subject to the penalties prescribed in the decrees of the Holy Council of Trent, session 24, chapter 6, concerning abductors. The question is whether, given Orsetta's consent, Felix is subject to these penalties, and whether the marriage is valid, and whether the dowry should be assigned to her. The Holy Congregation, etc., decided that, according to what is presented, the abductor is understood to be included in the penalties, as well as in the prohibition of marriage, according to the aforementioned decree, chapter 6, session 24, concerning reformed marriages. This decision is reported by Riganti in the register of the chancery, 49. And according to this doctrine of the Holy Congregation, the Holy Rota (it is said) has judged several times, as can be seen in Decisions 250, part 16, number 3, and elsewhere. However, the defender of Agnes argued that, in the present case, Agnes not only did not consent to the abduction, but such force, machination, and fraud were employed against her that she was brought under the power of Sempronium, against whom she could not resist in any way. In this violence, there was no doubt that the true nature of abduction was present. Furthermore, the Advocate added that, since the Mother did not lead Agnes to Sempronium's house at Sempronium's command, but rather, this violence was inflicted upon her, it should be considered the same as if she were violently removed from her own home, just as it is the same as if someone were taken from their home and forcibly detained. Cicero, in defense of Cecina. Ulpianus, in the Constitutions, 1.1, § 24 ff., concerning *usus*. Furthermore, Agnes, who had rejected Sempro-

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nium by natural instinct, was fraudulently taken from her home, and after being brought under Sempronium's power, she was constantly detained by him, although through a governess, by deceitful machinations. It is the same whether this is done by herself, or by another, in silence. See Reg. II de reg. in 6. (1) See Riganti, to the rule 49 of the chancery, number 71 and following. (2) See Appendix II, in which this resolution of the Holy Congregation is explained in $\text{in detail, along with the practice of the same Holy Congregation.}$

[*Latin ed. p. 22*]

22. THE INVALIDITY OF MARRIAGE RESULTING FROM ABDUCTION. After these matters, the advocate for Agnetis proceeded to the second point, namely, to demonstrate that the alleged abduction had never been validated. For, having previously explained the Church's teaching on the economy of marriage concerning the abduction of women, which the MSS. has always detested; although, before the Tridentinum, abduction was not distinguished from coercion by force and fear, it was required that a woman who had been abducted be placed in a safe and free place before entering into marriage with the abductor (cap. 14 on betrothal and cap. 10 on procuration). And although, according to cap. 7 on abduction, a girl who had been abducted could legitimately contract marriage with the abductor if prior dissent were converted into consent, nevertheless, the Council of Trent decreed: "Between the abductor and the abducted, as long as she remains in the power of the abductor, no marriage can exist. But if the abducted woman, having been separated from the abductor and placed in a safe and free place, consents to take him as her husband, then the abductor may take her as his wife." (Conc. Trid. sess. 24, c. 6, de reform. matr.). Furthermore, the advocate sought to demonstrate, from the summary of facts presented above, that Agnetis had remained constantly under the power of Sempronius through the governess, who was Sempronius's agent; nor had she been placed in a safe and free place. For Agnetis had arrived at a lodging house through a prearranged scheme, which was neither safe, being a public place; nor free, in that she was detained there under the governess's custody, and, on the contrary, Sempronius had free access to that place. Moreover, the advocate raised the difficulty that Agnetis could have returned to her father's house, to which he replied that this was not the place to inquire what Agnetis could have done, but rather what had actually happened. For, according to the law after the Tridentinum, the validity of the consent depends on the nature of the place in which the abducted girl is placed. Therefore, since Agnetis was not, in fact, separated from the abductor, nor placed in a safe and free place, either by herself or by others, the marriage contracted in this way must be considered invalid. Furthermore, the advocate added that the objection that Agnetis freely performed certain actions, such as

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visiting the confessional or an advocate, was irrelevant. For the conciliar decree, which requires a free place, does not consider certain free actions that can sometimes be performed even by those who are under duress, and therefore, in that place...

[*Latin ed. p. 23*]

NULLITY OF MARRIAGE RESULTING FROM RAPE. 2B. It is declared that such marriages are null. Consequently, it follows that any girl who is forcibly taken away to a place that is not safe or free, and even if she freely consents to marriage, the marriage itself is not valid. Finally, the objection arising from four years of cohabitation is refuted, first because the girl, always being weary from journeys, remained under the power of Sempronius, and especially because a marriage contracted by force and fear cannot be validated, where the law of Trent is in force, when there is a public impediment. Giraldi, *Ius noviss.*, part I, section 658, who, referring to the doctrine of the Sacred Congregation, states that it has often responded that, after the Council of Trent, a marriage contracted under fear, and "after the fear has been removed by cohabitation with carnal intercourse and other acts," is not validated, unless it is contracted again, using the proper form of that same Council. Nor is it otherwise reported in the Rotale decision 900, in the principal collection of Seraphin, in which it is read: "It was inquired into, and found out." what should be done in the case of those who, through force and fear, having used "all the solemnities prescribed by the Sacred Council of Trent, session 24, chapter I, on reform," entered into marriage. The Congregation (of the Council) responds that if such an impediment is hidden, and the parties, after this, freely consent to remain in the marriage thus contracted, it is customary for the Pope, through the Penitentiary, to declare that, although the marriage is null, due to the hidden impediment, they may freely contract a new marriage between themselves, without, or with, the solemnities required by the Council; but if the impediment is manifest, it must be contracted again, using all the solemnities that were used in the first contract. Doubt. "Does the nullity of the marriage consist in this case?" The Sacred Congregation of the Council, after discussing the matter on June 25, 1864, judged the marriage to be invalid, responding affirmatively to the proposed doubt, a judgment which was again "confirmed" on August 27 of the same year. RESOLUTION OF THE DOUBT. From this, it can be gathered: I. That it is just as unlawful to forcibly take a girl from her own home, as it is to deceive her by trickery so that she unknowingly falls into the hands of one who intends to kidnap her. II. Indeed, it seems to be just as unlawful to take a girl from her own home.

[*Latin ed. p. 24*]

24. INVALIDITY. MARRIAGE RESULTING FROM ABDUCTION. And

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if she is brought back by fraud, so that she does not return freely to her home, she is considered to have freely left. It is not relevant whether the girl consents to these frauds; for consent obtained through fraud is equivalent to open violence (1). IV. In this state, the abducted girl remains incapable in law of contracting marriage with the abductor. V. However, she can become capable if she is separated from the abductor's power and placed in a safe and free location. VI. Nevertheless, the girl is not considered to be separated from that power if the abductor, rather than himself, exercises power over the girl through another. VII. Nor is a place to be considered safe or free, even though some actions may appear to be freely exercised therein. VIII. Nor is this marriage valid if contracted in this state, even if, before the celebration, it was prudently foreseen that the girl would consent to this marriage, even if she were placed in a safe and free location. IX. Therefore, the validity of the marriage depends on the nature of the place in which the abducted girl is held. X. Finally, it is clear that a marriage contracted in this way cannot be validated, where the law of Trent is in force, by prolonged cohabitation (2). (1) See Appendix I, section i. (2) From this it is clear that a marriage contracted with the impediment of abduction cannot be validated by cohabitation; because such an impediment cannot cease unless the woman is legitimately separated from the abductor. Furthermore, by cohabitation, she remains constantly under the abductor's power.

[*Latin ed. p. 25*]

In S. C. 0 1 8 E 6 A T I 0 1, the Bishop of [Illegible] and the Procurator for the Religious. Regarding the restoration in integrum of the vows, August 12th. 1864. Summary of the case.

Titius, born into poverty, orphaned by his parents from infancy, was taken in by his uncle. While still a young man, and despite the fact that he was not of the family, it is alleged that they forcibly compelled his nephew to become a member of the Order of A., even though he had clearly expressed his aversion to that way of life. Thus, Titius entered religion, and during the period of his trial, he repeatedly testified that he had not embraced that state of life either by divine vocation or of his own free will. Nevertheless, after completing his novitiate, at the age of 17, he made his solemn profession in the year 1834. Two years after this profession, due to the suppression of his Order by political upheavals in the Kingdom of B., he, along with the others, was expelled from the monastery and learned a mechanical trade. In the year 1848, he petitioned his Bishop to institute a cause regarding the nullity of his profession, which had been obtained by force and fear. This petition was deemed useful, but ultimately fruitless, as too much time had already passed. However, in order to obtain the necessary proof for this cause, two interrogations were conducted, in which, before the parish priest and Tabetillon, six witnesses were ques-

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tioned; namely, three brothers of Titius, who, under oath, confirmed the events in the first interrogation (which concerned the violence inflicted outside the monastery); and three religious, who, also under oath, testified in the second interrogation, regarding what had occurred during the time of his novitiate. Therefore, in order to be able to proceed with this cause, Titius petitioned the Holy See in 1849 for the benefit of restoration in integrum, but his requests for information to the Ordinary were, although submitted, suspended (the reason for which is unknown), until, with repeated petitions in the year 1862, and after the matter was brought to the attention of the Bishop, and with a request for a report on the causes for restoration in integrum and the nullity of the profession, it was determined whether it could be done.

[*Latin ed. p. 26*]

26. RESTITUTION. IN FULL. AND WITHOUT PREJUDICE. To the prior, who presented the matter according to the established rules, he replied: "I have only heard one elderly religious priest, who knew him (Titius) during his novitiate, and who asserted that he was very often punished because he did not observe the rule, nor obeyed the precepts of the master, and that he openly stated that he desired to be expelled, because he had taken the habit against his will." Furthermore, he expressed a desire for the full restitution of Titius. No one from the Order opposed this desire. Therefore, with further diligence applied by the Sacred Congregation, so that, as far as possible, a regular process might be instituted, and in order to avoid delays, having obtained the aforementioned documents in authentic form, the Most Holy Father benignly approved that, notwithstanding the expiration of the canonical term, and the delay of the Orator outside the cloister (1) in lay dress, due to the circumstances of the Kingdom of B., the case might be decided based on the transmitted documents, even though they were incomplete, and lacking the prescribed forms (2), solely by considering the truth of the matter, summarily and economically, notwithstanding the constitution of Benedict XIV: *Si datam*, and all other contrary things. Therefore, this case was presented by mandate of the Most Holy Sacred Congregation, and discussed under the doubts placed at the end.

SYNOPTIC DISCUSSION. DEFENSE OF TITUS REGARDING THE FIRST DOUBT. Titius, through a defender whom he considered suitable, initially argued that the decree of the Council of Trent, session 35, chapter 19, which states: "Whoever claims to have entered religion by force and fear... shall not be heard unless within five years..." presupposes that the religious person, by not making a complaint within five years, intended to ratify his entrance. (1) Indeed, no religious person can make a complaint against his profession, unless he is within the cloister of his religion, and having resumed his religious habit, if he has previously

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laid it down. Constitution *Si datam* and Council of Trent, session 25, on religious orders, chapter 15. Therefore, in such cases, the Sacred Congregation often responds: "Let him resume his habit, return to the cloister, and then appeal." (2) Benedict XIV, in the constitution *Si datam*, prescribing the method to be strictly observed in conducting these cases, condemns extrajudicial testimonies with these words: "However, we do not ignore that among religious superiors and local ordinaries, it has been customary to base their judgments on extrajudicial testimonies, even though confirmed by oath, which are said to be for perpetual (so that the proof may not perish with the death of the witnesses); we desire, and strictly command, that in order to provide the necessary proofs in such cases, a true judicial process be entirely completed..."

[*Latin ed. p. 27*]

RESTITUÌ, IN INTEGR. ET NULL. PROF. 27: To restore fully, and to declare null and void a profession. He did not possess his profession, perhaps from its very origin. But this presumption of law is nullified by contrary proof. *Pigliateli*, consult. 173, vol. 9, no. 10, and 32, where it is said, "If he protested (as a Religious) before and after his profession, this removes the presumption of the validity of the profession, which is founded solely on the presumed will. For the presumption of the law ceases, when it is clear and expressed [will]." Confirming this doctrine with other authorities, the Defender added that the repeated complaints were established by the records. Three religious testified that Titus had, on numerous occasions, during his novitiate, manifested that he had entered the Religious Order "against his own will," and that he had been induced to do so, lest he experience the "rigors of his uncles"; and that he had been oppressed by them, and forced to promise to yield to their will, and to make a profession under duress. Furthermore, one of the witnesses testified that Titus had, one night, determined to flee from the monastery, and then, because of foreseen temporal evils, had refrained from this purpose. To these, the Defender added other subsequent indications of Titus's will, namely, his prompt departure from the monastery; the interrogatories presented; and the repeated prayers. From all of these, he considered it sufficiently proven that Titus never had a valid profession. And if such complaints had been lacking, he argued, restoration would be granted to him on another ground. "For to one who is ignorant and legitimately hindered, time does not run." Furthermore, the matter concerns a man who was uneducated and ignorant of letters, who, in his youth, made a profession, and who remained in the lowest condition of the Order, and therefore could not know what is prescribed by canon law regarding the five-year period. And although ignorance of the law does not excuse, the case is excepted when someone is of a minor age, *Instit. I. 9 ff. de iur. et fact. ignor.*, or, if he were of age, when it is not a matter of obtaining a profit, but of avoiding a loss, the same

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ignorance of the law can be alleged, *Instit. I. 8 ff. ibid.* To which, if you add the circumstances of time, namely, dispersion; of place, namely, great distance from the Holy See; and of the person, who was also lacking the means to support himself, you now have sufficient grounds for claiming an impediment. Therefore, the Bishop also issued a favorable opinion to Titus, "because of his ignorance of canon law concerning this matter, because he was too young and without studies"; and as soon as he became certain, namely, in the year 1849,

[*Latin ed. p. 28*]

28 "RESTITUTO IN INTEGRUM, ET NULLA PROFITENTIA." Suas preces ad Sanctam Sedem direxit, ut de lapsu quinquennii dispensaretur. QUOD SECUNDUM DUBIUM. — Ad alterum superveniens dubium, praemisso iuris indubitato principio, nempe quod religiosa professio emissa per vim et metum, cadente in constantem virum, irrita est, et praemissa Cardinalis De Luca auctoritate, *De Regii, Discursus* 44, n. 4, ubi ponderatur non nisi ex individuis casuum adiunctis gravitatem vis et timoris iudicari posse: contendebat defensor hanc vim et gravem metum ex testium depositionibus demonstrare, qui in interrogatorio deposuerunt, avunculos affecisse Titium in ea tenera aetate, molestiis, minis, obiurgationibus, colaphis et gravioribus percussionibus; ipsumque terruisse timore expulsionis in longinquam regionem aliisque similibus, et quidem, ut Defensor arguebat, ut Titius Regularis Ordinis A. fieret. Accedit quod alter Titii avunculus, cum esset eiusdem religiosae domus superior, concurrebat etiam minis et suasionibus, ex aliorum mandato, ut Titius induceretur ad illum Ordinem amplectendum. Conabatur praeterea Defensor duplicem refellere obiectionem promptam, tum ex testibus, utpote qui erant Titii fratres, tum ex eorum depositionibus, quasi testati non essent hanc vim et metum ad finem profitendi fuisse incussum. Animadvertebat enim quoad primam, quod, cum agitur de coactione quae locum habet intra domesticos parietes, sufficiunt leviores probationes, imo indicia, coniecturae, et admittuntur etiam testes singulares sanguine et amicitia iuncti. *Pignat.*, loc. cit., n. 46. *Rota Decis.*, 9, coram Arguelles, §. 74 et 76, etc. Excludere curabat alteram, cum haec in depositionibus habebantur: « Avunculi sibi proposuerunt Titium fieri debere religiosum Ordinis A., quamvis ipse aperte resisteret — et alibi « ipsi (avunculi) loquuti sunt eodem tempore cum Superiore ut eum reprehendere! et induceret ad amplectendam religionem », qui (superior) minatus est, . . ., si avunculis non compiacere statum religiosum amplectendo. » Proinde concludebat, cum agatur de reverentiali timore, minis, percussionibus, aliisque coniuncto, sufficiens debet existimari ut professio religiosa irritata censeatur. *Pignat.*, loc. citat., aliique. QUOD TERTIUM DUBIUM. — Contendens insuper praestitum a Titio consensum in professionem

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religiosam fuisse etiam simula-

[*Latin ed. p. 29*]

RESTITUTIO*. IN INTEGRUM ET NULLITATEM. PROFESSUS, tum, ad tertium descendebat dubium implorans a S. Sede saltem dispensationem ex supra allegatis causis, ex conditione praesenti in qua Titius reperitur, propositis S. C. aliis dispensationis concessae exemplis. DEFENSIO PROFESSIONIS RELIGIOSAE QUOAD PRIMUM DUBIUM.— Contra, Defensor Religiosae professionis in causae merito contendens, Jocum non habere beneficium restitutionis in integrum, et praeminens praeter Tridentinam sanctionem, id quod Benedict. XIV declaravit in constitutione Si datam scilicet « omnem aditum ad recla» mandum professis interclusum esse.... post quinque annos ab » emissa professione ; » etenim ut observat Reiffenstuel I. 3 tit. 31 n. 201 decr. « alias non obviaretur litibus, nec religiones gauderent tranquillitate, quod fuit praecipua mens et -» intentio Tridentini,» adnotabat praeterlapsum fuisse, non quinqueennium tantum, sed tria circiter quinqueennia a professione «emissa ad primam reclamationem. Quamvis autem ille qui impeditus est legitime intra quinqueennium, allegatis deinde causis impedimenti legitimi, restitui possit; Reiffenst. I. 1 tit. 21 §. 1, tamen in praesenti themate, huiusmodi causas aiebat desiderari. Causa enim haec non est iuris ignorata, quae non admittitur. Neque defectus studiorum et culturae, neque loci distantia eludere possunt, quae iure sunt sancita. Aetatis insuper Titius erat qua, intra longum quinque annorum spatium, consilium petere ab eruditis viris facile potuisset. Neque carentia mediorum allegari valet, cum intra illud spatium potuisset simplici supplicatione et querelarum enarratione exhibita, tum Ordinario loci, tum Superioribus regularibus, sine expensis facile reclamare; vel si extra coenobium fuisset, sufficiebat ut preces ad S. Sedem dumtaxat mitteret, quibus actio perpetuabatur. Quibus levibus curis non habitis, concludebat, indicium satis grave enasci de expiscata postea causa nullitatis, et aliunde potius quam ex propria nullitatis persuasione. QUOAD SECUNDUM DUBIUM. — Suppositis praeterea etiam iustis causis propter quas Titius reclamare non potuerit (prosequebatur), post Constitutionem Si datam, tunc conceditur in integrum restitutio, cum clara ita appareat probatio nullitatis, ut illa concessa, censeatur causa veluti definita; quam claram probationem nullitatis contendebat nullimode adduci. Vis enim et metus cum

[*Latin ed. p. 30*]

SO, I RESTORE, IN FULL, AND NOTHING OF THE FACTS ALLEGED ARE PRESUMED, BUT MUST BE CONCLUSIVELY PROVEN. Concerning you, I. C., I consulted the decrees of Innocent III in cap. *Causam de off. Deleg.*, Mascard, de prob., conclus., 1051. Furthermore, he objected against the witnesses and their testimonies, saying, firstly, that the interrogator had simply been confirmed by the witnesses, without formally adducing the

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cause of his knowledge, as was required in chapter 36 concerning witnesses and attestations. And since it cannot be ascertained from the records that they had conversed with Titus, they seemed to be reduced to the status of hearsay witnesses, who are much less trustworthy, especially if what they testified had been received from Titus himself. For no one is considered a suitable witness in his own case. *In 10 ff. de test.*. Especially since they were Titus's brothers, and the very fact that they were such makes their testimony suspect. Voet, *ad Pandectas*, L XXII, title V, § 4, etc. Moreover, upon examining the testimonies, it was discovered that the purpose of the assaults and threats inflicted by the uncles was to compel Titus to enter into a profession from which he abhorred. Furthermore, such chastisements and threats, even if they had been very severe, are not to be considered, nor do they invalidate a profession, if they were not inflicted precisely for the purpose of extorting consent or a profession, as was judged in a more serious case by the Rota, decree 798, nos. 58, 59. Therefore, it is also established in law that if someone professes a religious state to avoid some evil, even a great one that threatened in the world, he makes a valid profession, even if he would not have professed otherwise, as the Sacred Congregation of the Council declared in Carduben, *Null.*, preface, July 28, 1731, § 1, and Fagnanus, in chapter *si quis*, 82, de *Regul.*. Furthermore, noting that the other witnesses (who testified about what happened during the time of his novitiate) did not testify that Titus had been subjected to violence and threats during that time, he argued that Titus could have freely made his decision to profess, and he believed that this could be inferred from Titus's constant silence for fifteen years regarding such a profession.

REGARDING THE THIRD DOUBT. — Since it is not established in any way that violence and threats were inflicted to induce him to profess, and lacking any other cause that would otherwise be very serious in order to grant a dispensation in this matter, Mascat, in *Ins.*, Canon I, 3, title 3, no. 29, and Sánchez de *matrim.*, book 8, disp. 8, § 8, hold that there is no place for an apostolic dispensation. The desire to regain his former freedom, faculty...

[*Latin ed. p. 31*]

RESTITUTION. IN FULL. AND NULLITY. 3f concerning the leading of a wife, there have never been considered sufficient reasons for relaxing this bond. Doubts. I. "Whether there is a place for full restitution in this case." II. "Whether it pertains to the nullity of the profession in this case." "And to the extent that it is negative regarding II." III. "Whether it is necessary to consult the Most Holy See for a dispensation in this case." SOLUTION OF DOUBTS.— The Sacred Congregation of the Eastern Churches and the Regular Canons, after discussing the case on August 12, 1864, decided to respond: to I, II, and III, negatively. FROM THESE, AMONG OTHERS, ARE GATHERED: I. A religious person acting against their profession should

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not be heard by ordinary judges if five years have elapsed since the profession. II. Therefore, in order to be able to act regarding the nullity of the profession, one must implore from the Holy See an extraordinary benefit of full restitution against the five-year lapse. III. However, this benefit will not be granted unless it is established that there are legitimate reasons, due to which the religious person could not appeal within the useful five-year period, and especially if it is not established that there is a good right, by which he can avail himself against his profession, after obtaining this benefit of restitution (1). IV. It is also understood that a religious profession should not be declared invalid due to coercion and fear, unless both of these are demonstrated with firm proofs, namely: a) that the coercion and fear were grave, and affecting a constant man, (2) and b) that they were imposed in such a way as to... (the sentence is incomplete in the original text).

(1) According to the Constitution *Si datam*, when full restitution is granted by the Holy See, the cause concerning the nullity of the profession is considered as definitively settled; however, the ordinary judges to whom the case is remitted, should judge regarding the nullity. But when, in addition to full restitution, a dispensation is also requested from the Holy See, as in this case, the Holy See itself takes on the entire cause. Also, when other extraordinary reasons are present for taking on the entire cause; and also when those requesting and the lower judges, as is customary, remit the entire case to the Holy See, in order to avoid almost useless regression in the cause, so that it appears that whenever full restitution is requested from the Holy See, the Holy See also judges regarding the doubt of the nullity of the profession. (2) When a grave threat is determined in some way, and it is said that it affects a constant man, this is a certain rule that is transmitted in words, which must be applied prudently in each case, taking into account the individual circumstances of the persons involved.

[*Latin ed. p. 32*]

32. RESTITUTION. IN INTEGRUM. ET NULLA PROFIT. eam ab alio ex consensu extorquendum in ipsam professionem religiosam. V. In praesenti vero causa infirma fuisse argumenta ad haec duo demonstranda multiplici ex capite. VI. Hisce autem in adiunctis neque esse dispensationi locum. Religionis enim Sanctitas non sinit ut fides supremo Numini lata, sera poenitentia frangatur.

MINORUM OBSERVANTIUM S. FRANCISCI SUPER ITINERATIONE IN VIIS FERRATIS. Die 19 Iunii 1863.

Compendium facti. Cum SSmo D. N. supplex, celato nomine, libellus oblatus esset in quo Orator inter Religiosos franciscales ab observantia adscriptus, abusiones in provincia A. circa Regulam S. Francisci invectas ac nominatim circa usum calceamentorum lamentabatur, ac praeterea declarationem postulabat an Fratribus sub purae eiusdem regulae vexillo mili-

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tantibus, in itinere faciendo, curribus uti liceret vi vaporis impulsis; Sanctitas Sua supplicem eundem libellum S. Congregationi Episcoporum et Regularium negotiis et consultationibus praepositae remittendum curavit, ut ea de re accurate videret et in Domino super precibus decerneret.

S. C. ante omnia Generalis Ordinis Franciscalis ab observantia sententiam rogavit, qui circa usum calceamentorum retulit constantem ubique et uniformem regulam non posse praescribi. Quod vero pertinet ad currus vaporiferos pro itinere Fratrum adhibendos, votum a Definitorio emissum amplectebatur, nempe recentium eorum curruum usum per Regulam S. Francisci non prohiberi; neque esse illicitum, si iusta cum causa et sine pecunia usurpetur; eumdem non licere ex titulo merae recitationis; denique supremis Moderatoribus invigilandum esse, ne sine sua licentia, itinera in viis ferreis suscipiantur.

S. Congregatio votum insuper exquisivit unius ex suis Consultoribus qui itinerationem in viis ferratis a Regula S. Francisci proprie iudicis arbitrio. Ule ex, gr. metus qui virum constantem non moveret, terrere potest meticulosam puellam, adeo ut pro hac puella censendus sit gravis.

[*Latin ed. p. 33*]

THE OBSERVANCES OF THE MINOR ORDER OF ST. FRANCIS, CONCERNING TRAVEL ON RAILWAYS, NUMBER 33: It did not prohibit travel by railway; however, it considered it necessary to prescribe measures to prevent abuses, so that no one, without the permission of the local Superior and a just cause, where free accommodations were not available, would dare to travel on such railways. Therefore, two General Chapters were proposed, as indicated in the following doubts. A copious and learned exposition of the law was always presented beforehand to elucidate the matter. It was observed that among all, the Rule of St. Francis, in the form which they say was approved by Honorius III in the Constitutions *Solemnes*, had been established, and that subsequent Popes had confirmed it, some of whom had further declared it on several points in chapter *Exiit. de verb. sign*, paragraph 6 (t), in which a distinction is made between chapters which are counsel and those which are precepts; and so, the precepts themselves are subdivided into those which are formal and eminent, those which are virtual, those which have force, and those which are of equal value. Indeed, from the words of the same chapter, precepts of equal value have a true and full binding force; moreover, this precept concerning the equality of those of equal value is discussed at length in the *Clementinae, Exivi*. Urban VIII, in the Constitution *Militantis*, dated June 1, 1610, § 1, established penalties for those who, without manifest, true, and serious necessity or infirmity, and without the permission of the Provincial, or in an urgent case, with the written consent and judgment of three discreet members of the Convent, dared to ride (2). After this, several other things were brought forth which

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are in accordance with this Constitution, and which are sanctioned in special constitutions of Franciscan families, as well as those which are transmitted by commentators on the Rule of St. Francis, among whom St. Bonaventure, in his exposition of the Rule of St. Francis, page 340, among his works, volume 7, has: "But the rule adds (and not) 'they ought not to ride,' and consequently, they ought not to use carriages, nor chariots, or other vehicles which cost more, unless there is manifest necessity" (3). Also, Clement. Exsul I de V. S. Extrav. Quorumdam eod. tit. (2)Td itself prohibits this. Innocentius X, in the Constitution *Sollicitudo Pastoralis*, dated April 20, 1679, Innocentius XII, in the Constitution *Acta*, volume I, page L, "Alias a felici," and finally, Benedict XIV, in the Constitution *Iniuncti nobis*, issued for the Capuchin family of St. Francis, in addition to those which were sanctioned concerning not riding, Martin V and Julius II (3).

[*Latin ed. p. 34*]

34. OBSERVATIONS OF THE MINOR FRATIARIES OF ST. FRANCIS, ON THE ITINERARY, IN THE VATICAN.

"Those who are compelled by the impediments of the journey, or by urgent business, or by infirmity, are said not to be obliged to ride." Furthermore, commentators teach that navigation does not fall under the censure of the Franciscan Rule. Indeed, De Amoeno, in *De delictis et poenis*, book 3, title 9, § 2, holds that travel by carriages, which are propelled in other ways than by animals, is not prohibited by the Rule, and more recent commentators (1) all agree that the use of traveling on railways is not prohibited in itself, since the Founder of the Rule could neither have comprehended it, nor could he have conceived of it in his mind.

AS TO WHAT SEEMED PARTICULARLY TO OBSTRUCT THIS JOURNEY.

I observed that the legislator, in prohibiting riding, had three ends in view, which are commonly taught by commentators in regard to the prohibition of riding, namely, to provide a means of avoiding extravagance in the price of riding, to promote the observance of humility, and to practice austerity. But for travel on railways, a price is required; one travels in the manner of nobles, or at least of the wealthy; finally, the journey is accomplished more comfortably than on horseback or in a carriage drawn by horses. Furthermore, since that which is less is prohibited, that which is greater should also be considered prohibited, if it is contrary to the end that the legislator has in view; and since riding in a carriage or chariot is greater than riding on horseback, it is commonly taught by St. Bonaventure and by commentators under the Franciscan Rule that riding in carriages and chariots falls under the censure. But being carried on railways is even

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greater than being transported in carriages or chariots. Therefore, Benedict XIV, in the Constitution "iniuncti nobis," while establishing penalties for those who use litters without cause, also adds that any other form of conveyance is likewise to be prohibited. This is a general formula of expression, and it is widely understood. Furthermore, when an act is prohibited, the opposite of that act is understood to be commanded; thus, if idleness is prohibited, then occupation and labor are commanded. Therefore, when riding is prohibited, it is said that walking on foot is commanded. Indeed, if you are commanded to walk on foot, then it will not be permitted for you to travel in any carriage propelled in any way. Finally, I observed that the use of steam carriages opens the way to the easiest of journeys, with many inconveniences. For first, the price of the fare...

(1) P. Cunicatti, Albert of Bulsano, Father Samuel of Laude Pompeia, commonly called Lodi.

[*Latin ed. p. 35*]

MINOR OBSERVANCES OF THE ORDER OF ST. FRANCIS REGARDING TRAVEL ON RAILWAYS. 35. It must be noted that the Brothers are given the opportunity to travel; the Regular Order is maintained by those who travel together in the same carriages, and this is especially important in these times, when the religious habit is viewed with hostile eyes.

OBJECTIONS AND SOLUTIONS. — The objections raised are as follows. It was answered to the first objection that the end of the law does not fall under the law: although St. Francis proposed that triple end [of poverty, humility, and mortification] to himself, it does not follow that the Brother who conveniently, joyfully, and pleasantly completes a journey on foot, with honorable company, is subject to the prohibition of riding; for he may not avoid sin for another reason. And in steam carriages, where the seats are of different classes, at least in relation to lay people, the Religious is not prohibited from attaining that triple end of poverty, humility, and mortification.

To the second objection, it was answered that the same principle applies: if a greater thing belongs to the same genus as a lesser thing, then the lesser thing also belongs to that genus; therefore, riding in a biga [two-horse carriage] and a quadriga [four-horse carriage] are of the same genus as riding, and are therefore not permitted. However, it is different when the things themselves are of a different genus; and indeed, navigation is not subject to the precept against riding, and therefore does not fall under such a precept, as commonly taught by the commentators.

The third objection is valid when there is nothing intermediate between the two actions, such as there is between idleness and labor; but there is navigation between riding and walking, which, as we have indicated, is not prohibited.

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Regarding the last objection, it was observed that there is nothing in the nature of things that cannot give rise to inconveniences and abuses, if due precautions are neglected; care must be taken to provide for this, so that any inconveniences that may arise are remedied, and, as far as possible, prevented.

DOUBTS.

I. "Is there any room for prudence regarding the asserted violation of the Rule in general, and specifically regarding footwear, in this case?"

II. "Is the use of steam carriages on railways permitted to the Brothers of the Observance, and if so, in what circumstances?"

[*Latin ed. p. 36*]

36. OBSERVANCES OF THE MINOR FRATIARS OF ST. FRANCIS CONCERNING TRAVEL BY RAILWAY. RESOLUTION OF DOUBTS. – The Sacred Congregation of the Eastern Churches and the Religious, on the 19th of June, 1863, deemed it fitting to respond to a request from the Superior General, stating that, insofar as the matters presented are true, he should proceed according to the Rule of the Order; and concerning footwear, he should provide a more precise report, after hearing the opinion of the General Definitorium. Regarding the second point, it was affirmed, for a reasonable cause, that permission from the Superior is granted, as is customary, always with due regard for humility.

CONCERNING THE FOOTWEAR OF THE MINOR FRATIARS OF ST. FRANCIS. A Summary of the Matter. The General Minister of the Order of the Minor Fratiars of St. Francis, having received instructions from the Sacred Congregation of Bishops and Regular Canons, as stated in the resolution concerning the first doubt in the matter of the Minor Fratiars of St. Francis concerning travel by railway, dated the 19th of June, 1863, which we have just presented, to provide a more precise report concerning footwear, after hearing the opinion of the General Definitorium, deemed it fitting to write to the Sacred Council on the 5th of March of the year 1864, in which he indicated that, after having heard the opinion of the Definitorium on several occasions, it was found that the Rule does not prohibit any particular material suitable for covering the feet, where necessity does not require it; and that, according to the force of the Apostolic prescriptions, the teachings of the commentators, and the tradition up to that time, the use of sandals could not be admitted in such a way that the upper part of the foot remains exposed and uncovered; and that, since the matter is one that admits of a great deal of latitude, it is not surprising that there may have been some difference in opinions and practices; and that it would be dangerous and very difficult to introduce perfect uniformity and equality everywhere. Finally, although some abuses may have been observed, nevertheless, since declarations already exist to correct them, he concluded that it would be more expedient if nothing new were introduced, and rather that insistence

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should be placed on the fact that Superiors [should]: (1) When a resolution is postponed, the phrase "Dilata" is used, meaning "delayed resolution" or "it is delayed."

[*Latin ed. p. 37*]

OBSERVANCE OF THE RULE OF ST. FRANCIS CONCERNING FOOTWEAR. 37 To promote the observance of these regulations and to ensure that abuses do not arise, and that if they do arise, they are promptly eradicated. A concise discussion. When the letters of the General Administrator were to be presented to the plenary session of the Order of Friars Minor Conventual and Regular, it was deemed not inappropriate to present, in accordance with custom, the chapter of the Franciscan Rule concerning footwear. The Patriarch Seraphicus, in Chapter 2, near the end of his Rule, states: "And those who are compelled by necessity may wear shoes." His Holiness Urban VIII, in the Constitution *Sacrosanctum*, October 1, 1623, Bull. *Mag.*, Vol. V, page 362, declared that the Brothers are to walk "only in sandals or open shoes, and they may not use any other covering for their feet made of cloth or of any other material, without express permission." A similar declaration, though not in the same words, but in accordance with the same sentiment, was issued by Innocent XI, in the Constitution *Sollicitudo*, November 20, Bull. *Mag.*, Vol. 8, page 119. Following this, an explanation of this chapter was read, as transmitted by St. Bonaventure, in *Expos. Reg. Oper.*, Vol. 7, page 337, at Rome, by the Vatican Press, in 1696. Subsequently, the texts of the statutes, which today have force and effect within the Order of Friars Minor of the Observance, concerning the covering of the feet, Chapter 2, § 10, no. 147, were presented. There, the Constitutions of Urban VIII and Innocent XI are cited, and what was established by them is repeated and confirmed. Furthermore, the provisions of Chapter V of the same statutes were added, which reads as follows: "For the needs of the sick and other Brothers, the spiritual assistants of the Ministers and the Custodes shall take diligent care, according to the places and times, and in cold regions, as necessity may require."

Doubt: "Can a dispensation be granted, in certain cases, regarding footwear?"

RESOLUTION OF THE DOUBT. — The Sacred Congregation of Religious, etc., on July 8, 1864, decided to write to the General Minister, instructing him to ensure that the Rule and Constitutions of the Order are observed in accordance with the declarations of the Supreme Pontiffs, and to eliminate any abuses that may exist.

[*Latin ed. p. 38*]

SS. MINORUM OBSERV. S. FRANC. SUPER CALCE AM. From these and the preceding considerations concerning the Seraphic Order, you

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could not present anything more useful than the most excellent virtue of austerity and humility, which constantly shines forth in the Seraphic Order. This virtue would be sought in vain, both outside the true Catholic Church of Christ the Lord, and among those who, although commonly called Catholics, place their entire glory and happiness in the use of worldly things and the inventions of arts; so that, perverting their own estimation of created things, they become incapable of emulating these examples of virtue, as is fitting to be esteemed, as the Church has always esteemed and promoted through its laws.

EX I CONGREGATIONUM SS. BITDtl. PLURIUM DIOECESUUM, 9 Iulii 186-i. DECRETUM. "Certain Most Reverend Prelates of Gaul, seriously considering, have petitioned the Apostolic See, stating that in many of their dioceses, it is very difficult, and only possible with great expense, to obtain olive oil to nourish, even at night, at least one lamp before the Most Holy Sacrament of the Eucharist. They have asked whether, in such cases, given the difficulties and the poverty of the churches, other oils, derived from plants, might be substituted, even excluding petroleum.

The Sacred Congregation of Rites, although always concerned to maintain, even in this matter, what has been established from the very origins of the Church regarding the use of olive oil, due to its mystical significance; nevertheless, did not consider it right to pass over in silence the reasons presented by the aforementioned Bishops; and therefore, after first obtaining the opinion of another of the Masters of the Apostolic Ceremonies, the undersigned Cardinal Prefect of the same Sacred Congregation presented the entire matter at the Ordinary General Assembly held in Vatican today.

After all matters were carefully considered and thoroughly examined, the Most Reverend Fathers entrusted with the preservation of the Sacred Rites have decided to respond: "In general, olive oil should be used; where, however,..."

[*Latin ed. p. 39*]

DECREE CONCERNING LAMPS BURNING WITH OIL BEFORE THE HOLY SACRAMENTS. "It shall not be permissible to have lamps burning with oil; it is to be left to the prudence of the Bishops to see that the lamps are supplied with oil from other sources, as much as possible from vegetable oils." *July 9, 1864.* "Subsequently, a faithful report on the foregoing was made to the Most Holy Lord Pope Pius IX by the undersigned Secretary. His Holiness approved and confirmed the judgment of the Sacred Congregation. July 14, of the same month and year." C. THE BISHOP OF PORTUENA AND S. RUFINA, CARDINAL PATRIZI, SECRETARY OF THE HOLY ROMAN CHURCH. Signed by: D. Bartolini, SECRETARY OF THE HOLY ROMAN CHURCH. Summary of the Consultant's Opinion. The Consultant observed that the strength of the Church in maintaining those materials which have been used from

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the very beginning of the Church in matters pertaining to the sacred rites must be considered. Indeed, it is known that the Sacred Congregation has prohibited the use of wax, commonly known as stearine, in similar cases, as it had previously prohibited the use of cotton, etc., in sacred vestments, based on the principle that whatever has been retained and preserved from the very origins of the Church... due to its real and mystical significations, must be maintained and preserved entirely. Decree General, May 1819. Furthermore, he demonstrated that the use of olive oil has been constant in the Church in the matter under discussion, and that this use has also been prescribed by God in the Old Covenant, Exodus 25:6, Exodus 27:20: "Command the children of Israel that they bring you pure oil of olives, beaten for the light, to cause a lamp to burn continually." Also, Leviticus 24:2: He added that this particular oil was chosen by God, and used from the very beginning of the Church for sacred purposes. For under this symbol, many mysteries are generally indicated. The olive is a symbol of peace, as stated in *Pontificale Romanum*, page 3, in the consecration of the Chrism, and it represents the King of Peace. In all sacred things, as the author of the book *De divinis officiis*, attributed to Alcuin, says, Christ must be brought to our remembrance. Moreover, in olive oil, are found sublime prerogatives belonging to that same Divine Mediator. St. Bernard, Sermon 15 on...

[*Latin ed. p. 40*]

40. DECREE CONCERNING THE LAMP FED WITH BURNING OIL FOR THE HOLY SACRAMENTS. From this, the Church makes use of olive oil in sacred rites, blessings, consecrations, etc.; and adding further similar examples, he noted that something entirely different should be said concerning that which is called petroleum. For, as experts in chemistry teach, petroleum is a species of liquid bitumen, which is generated beneath the earth from the decomposition of organic substances; this liquid is composed of various mixtures of hydrogenated carbides, and is therefore highly combustible. It was not unknown to the ancients, who, as Herodotus, Pliny, and Dioscorides relate, used it in medicinal applications, and especially for providing light and warmth. However, due to its foul odor, its use did not prevail (except among the Persians and other peoples of Asia) until the present age, when a method was discovered for purifying it; and if this purification is not carefully carried out, it can, besides the unpleasant odor, also produce explosions and fires. Therefore, the Consultor concluded that, in the matter under discussion, olive oil should be used, except in cases of absolute necessity due to the complete absence of such oil. This is confirmed by the authority of St. Charles Borromeo in *Act. Mediol.* p. 4: "The light of the lamps should be fed with olive oil, and no other kind should be used, unless the Archbishop has granted permission for it, because none of that other kind can be obtained."

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And elsewhere in XI. Syn. Dioec.: "The oil with which such a lamp is fed must be pressed from olives," and no other kind of oil is permitted, unless it cannot be obtained." Also, Baruffaldi in *Comm. Rit. rom.* tit. de SSmo Euch. sacr. n. 73: "The light of the lamp must be fed with olive oil," and no other kind should be used, unless the Ordinary has granted permission for it, because none of that kind can be obtained." From which we gather: I. It is entirely fitting, even in those matters destined for divine worship, to preserve the venerable tradition of antiquity. II. Especially if such materials bear with them a mystical significance. III. Therefore, whatever may have a semblance of novelty, even in these matters, although under another aspect, or of lesser importance, or even useful,

[*Latin ed. p. 41*]

CONCERNING THE BENEDICTION OF HOLY OIL. 41 It is to be noted that [the use of] oil should not be introduced into churches unless there is a pressing necessity. IV. Therefore, concerning the matter under discussion, in the sole case of a deficiency of olive oil, the prudence of Bishops is entrusted with the use of other vegetable oils, namely, those which are in some way less different from olive oil. FROM THE SACRED CONGREGATION OF THE HOLY OFFICE AND THE UNIVERSAL INQUISITION. (A decree issued by the Sacred Congregation of the Holy Roman and Universal Inquisition concerning the doubt: "Whether the Sacrament of Extreme Unction can be validly administered with oil not blessed by a Bishop.") DECREES: 1. On the fifth day of the week, before the Most Holy Father, Pope Paul V, in a general congregation held before him, after a prior, mature examination and censure of the following proposition: "that the Sacrament of Extreme Unction can be validly administered with oil not consecrated with the blessing of a Bishop," having heard the votes of the Cardinals, he declared that said proposition was rash and close to error. 2. On the fourth day of the week, on the 14th of September, 1842, in a general congregation held in the convent of Saint Mary above Minerva, before the Eminent and Reverend Cardinals of the Holy Roman Church, as General Inquisitors against heretical perversity, concerning the doubt: "whether, in a case of necessity, a parish priest can use oil blessed by himself for the validity of the Sacrament of Extreme Unction," they decreed: negatively, according to the form of the decree of the fifth day of the week, before the Most Holy Father, on the 13th of January, 1655. On the same day, and on the following day, "His Holiness, Pope Gregory Divine Providence, XVI, approved the resolution imparted to the assessor of the Holy Office, in an audience."

[*Latin ed. p. 42*]

42, Rome, April 1864. DECREE. "Several Roman Clergy, and especially those concerned with the care of souls, have presented a doubt to this Sacred Congregation regarding Indulgences and Sacred Relics, namely:

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'Whether, indeed, a Priest celebrating Mass in a privileged altar, whether it be on the feast of a Semi-Double, Simple, Votive, or Feria day, or whether it be a privileged day, or by reason of the exposition of the Most Holy Sacrament, or by reason of a Station in the Church, or another Solemnity, or for a reasonable motive, enjoys the privilege of reading the Mass for the Requiem, as permitted on that day by the rubrics?' "

"The Sacred Congregation, therefore, which was held in the Vatican buildings on February 29, 1864, after hearing the opinions of the Consultors, decided that the answer should be: 'Affirmative, but with the words 'or for a reasonable motive' deleted, and with the word 'and' replaced with 'but'."

"Furthermore, I, the undersigned, Secretary of the same Sacred Congregation, reported to His Most Holy Lordship in an audience on April 11 of the same year, and His Holiness benignly confirmed the judgment of the Most Eminent Fathers."

"Given in Rome, from the Secretariat of the aforementioned Sacred Congregation of Indulgences, on April 11, 1864. F. ANTONIUS MARIA Card. PANEBIANCO, Prefect. In place of the seal, A. COLOMBO, Secretary. The entire opinion of the Consultor is presented in its entirety. The Consultor observed that it frequently happens that, during the exposition of the Most Holy Sacrament for forty hours, or during a Station in some church, the office of some Saint occurs, a rite of a Semi-Double or Simple class, or a Feria day that is not privileged. Moreover, for these external reasons, namely, the exposition and the solemnity of the Station, it is neither permitted nor fitting to celebrate the Mass for the Requiem. Therefore, when the Mass for the Requiem is celebrated on these days (a rite of a Semi-Double or Simple class, or a Feria day that is not privileged),..."

[*Latin ed. p. 43*]

DECREE CONCERNING MISSES FOR THE SOULS OF THE DEPARTED. (folding, etc.) should be celebrated according to the prescription of the rubric, so that anyone may enjoy the privilege of the altar. The Consultor noted a doubt: "Whether, indeed, a priest celebrating at a privileged altar, by reciting the Mass of the Feast, simple, votive, or of a non-privileged day, or for the reason of the exposition of the Most Holy Sacrament, or of the Station of the Church, or of another solemnity, or for a reasonable reason, enjoys the privilege as if he were reciting a Mass for the Dead, as permitted by the rubrics on that day." At the beginning, it was observed that the privilege of the altar is based on the application of the benefit of prayers for the souls in Purgatory, "to which application, by way of suffrage, a plenary indulgence is attached by the Church." Therefore, considering the nature of the matter, the privilege of the altar can best be harmonized with the celebration of any Mass. Hence, this privilege, which was previously granted only in the celebration of a Mass for the

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Dead, is now extended to these Masses as well, with the number of Masses of the double rite having been increased to include them. Therefore, this privilege of the altar is not so essentially connected with the Mass for the Dead that it cannot be joined with other Masses. And indeed, Alexander VII, in the Constitution "Creditae nobis," dated January 22, 1667, granted that in privileged altars, the obligations could be fulfilled perpetually by reciting Masses of the feast of the day, and that suffrage could be offered with the same indulgences as if Masses for the Dead had been celebrated, according to the form of the privileges, etc. This declaration was extended by Clement IX, in the Constitution dated September 23, 1669, also to privileged altars for a time, or for certain days of the week. "And since (so the Pontiff), there is also doubt as to whether the arrangement of these letters (namely, that of Alexander VII, mentioned above) applies to altars that are indeed privileged, but not perpetually, nor for all days of the week, and to Masses that are not celebrated out of obligation but solely out of the devotion of the faithful," it was granted and permitted "that Masses which are celebrated there on the feast of the day on which Masses for the dead cannot be celebrated, whether out of obligation or solely out of the devotion of the faithful, so that the souls of the Christian faithful for whom they are celebrated may obtain the indulgences granted by such privileges, in all respects and in every way, as if Masses for the dead had been celebrated according to the form of the same privileges."

[*Latin ed. p. 44*]

II. DECREE CONCERNING MISSES FOR THE DEPARTED. Regarding the days on which the rite is double, a second doubt arises: in which days are Misses for the departed prohibited? Such Misses are prohibited on Sundays, during the Octaves of Easter, Pentecost, and the Body of Christ, and on other days. Pope Innocent XI, in a Constitution, decreed this. Furthermore, on May 1, 1688, this doubt was addressed with these words: "The aforementioned declarations of our predecessors, Alexander and Clement, are to be understood for all days on which, according to the rubrics, Masses for the dead cannot be celebrated."

Therefore, a Consultor, approaching the present question more closely, inquired whether this extension of the privilege of the altar to Masses of the double rite should be understood only in the case in which the prohibition of Misses for the departed is repeated in the rubrics, or also when it is repeated by a particular disposition. For example, Pope Clement XI, in the Instruction for the continuous prayer of forty hours before the Most Holy Sacrament, decreed: "Masses for the departed shall not be celebrated during the time that the Prayer of Forty Hours lasts." And the Sacred Congregation, in Warsaw, on May 7, 1746, judged that Masses for the departed could not be celebrated if the Most Holy Sacrament is exposed, even in the tabernacle, if the prayer is for a public cause. Nor are such Masses

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celebrated, even though not prohibited by the rubrics, on those days in which the solemnity of a Station occurs in the churches.

Furthermore, adding to these considerations, the Consultor considered that, even in the case in which another reasonable cause intervenes, such as a solemn triduum on the occasion of a Beatification, or a solemn octave on the occasion of a Canonization, a Mass of the semi-double rite could be celebrated, and yet the privileged indulgence of the altar could be received. And indeed, the extension of the privilege to Masses of the double rite, granted by the Holy Fathers, was given "so that the souls awaiting suffrage should not suffer any detriment." (Sacred Congregation Decree, Urbis et Orbis, September 15, 1714, approved by Clement XI on September 29 of the same year.) This reason remains valid, whether the rubrics prohibit the celebration of a Mass for the departed, or whether a particular disposition, or another reasonable cause, is present.

Furthermore, concerning the Prayer of Forty Hours, (the Consultor continued), Pope Pius VII, in a rescript of May 12, 1807, declared that all altars are privileged in the church during the time of said exposition. Therefore, maintaining the prohibition of Clement XI, whereby...

[*Latin ed. p. 45*]

DECREE CONCERNING MISSES FOR THE SOULS OF THE DEPARTED. 4-5. It seemed that if Masses for the repose of the dead could not be celebrated at this time, the ample concession granted by Pius VII. during days of the semi-double rite, the simple rite, etc., would be frustrated, which seemed to be something that could not be affirmed. However, since the reason why the celebration of Masses for the repose of the dead is prohibited at that time is the solemnity of the function itself, as also observed by the Cardinals in the Commentary on the Instruction of Clement VIII, § 17, and since this solemnity also occurs in the aforementioned cases, it was considered necessary to conclude that this privilege of the altar should extend to Masses, whether votive, or of the semi-double or simple rite, or on a non-privileged feria, so that no detriment would be caused to the souls awaiting suffrage. This opinion seemed to be supported by two resolutions of the Holy Roman Church on matters closely related to this question, namely, the resolution of February 16, 1852, in which the Sacred Congregation declared: "In order for the priest to enjoy the privilege granted to the altar, he must celebrate the Mass – of the dead, and use black vestments, or, for a reasonable cause, violet ones." And more relevant to the matter at hand, to the question "Whether a Mass celebrated on a semi-double feast, a votive Mass, or a Mass on a feria in the privileged altar, in which the Most Holy Sacrament of the Eucharist is exposed, or in the ostensorium, or in the ciborium, will suffice for the departed, as if a Mass for the repose of the dead were said," the Sacred Congregation responded on July 20, 1751: "Affirmatively." With

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all of this explained, the Consultor considered that the proposed question could be answered affirmatively. From this, it is easily understood: I. That the indulgence, by way of suffrage of the privileged altar, was initially granted only to Masses for the repose of the dead. II. That, with the more frequent celebration of Masses of the double rite, this indulgence was also granted to these Masses, so that no delay would be caused to the souls awaiting suffrage. III. That, however, this indulgence does not suffice on those days on which a Mass for the repose of the dead can be celebrated, if another Mass, not for the repose of the dead, is celebrated. IV. That, nevertheless, it does suffice on those days on which the nature of the rite does not oppose this celebration; it is opposed, however, by a special rubric, or by some solemnity, as an example of which you have the aforementioned question.

[*Latin ed. p. 46*]

46. DECREE CONCERNING INDULGENCES. REGARDING THE PIOUS EXERCISES OF SAINT JOSEPH. TO THE CITY AND THE WORLD. April 27, 1865. DECREE. "Since the patronage of Saint Joseph, Spouse of the Blessed Virgin Mary, shines more and more each day as a great source of help and support for the Christian people, the MOST HOLY POPE PIUS IX, graciously granting the wishes of many of the faithful, through a Rescript of the Brief Secretariat dated June 12, 1855, granted to all the Christian faithful who, during the entire month of March, perform the pious exercises contained in the book printed in Rome, entitled: *Considerazioni delle virtù del S. Patriarca Giuseppe a dedicargli il Mese di Marzo* [Considerations on the virtues of the Most Holy Patriarch Joseph, dedicated to him for the month of March], an indulgence of three hundred days each day, and a plenary indulgence on one day of their choosing during that month, provided that they have confessed and received Holy Communion, according to the mind of HIS HOLINESS." "Now, moreover, the same Most Holy Pope, in order that devotion to this heavenly Patron may be increased more and more, and that this method of prayer may be spread more easily and widely, in an audience held on April 27, 1865, by the undersigned Cardinal Prefect, has graciously granted that all the Christian faithful may obtain these same indulgences, provided that they have performed some pious exercise of prayer and virtue throughout the entire month of March, similar to those that are usually performed in the month of May in honor of the Blessed Virgin Mary, observing in all other respects the tenor of the original concession; and HIS HOLINESS has decreed that these indulgences may be applied to the souls of the faithful departed as a form of suffrage, and that they shall be valid forever in the future, without any Brief being required." "Given in Rome, from the Secretariat of the Holy Congregation for Indulgences, on April 27, 1865." Fr. ANTONIUS M. Card. PANEBIANCO,

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Prefect. Signed: A. COLOMBO, Secretary.

[*Latin ed. p. 47*]

47 FROM THE SACRED CONGREGATION OF THE INDEX. DECREE. On the II day of the month of March, in the year 1865. The Sacred Congregation of the Most Eminent and Most Reverend Cardinals of the Holy Roman Church, by order of the MOST HOLY LORD, our Pope Pius IX, and the Holy Apostolic See, having considered the works following, which are judged to contain pernicious doctrine, and for their proscription, expurgation, and permission throughout the Christian Republic, in the Apostolic Palace at the Vatican, condemned and condemns, proscribes and proscribes, and orders that they be referred to the Index of Prohibited Books:

* *L'empire et le Clergé Mexicain*, by the Abbé Testory, Chief Chaplain of the French Army in Mexico, Knight of the Legion of Honor, Officer of the Imperial Order of Guadalupe. Mexico, 1865.

* *Les Musées d'Italie*, preceded by a dissertation on the traditional origins of modern painting, by Louis Viardot. Paris, 1859.

* *De la Guerre et des Armées permanentes*, by Patrice Larroque, former Director of the Academy of Lyon. Paris, 1864.

* *Geschichte der kirchlichen Trennung zwischen dem Orient und Occident von den ersten Anfängen bis zur jüngsten Gegenwart*, by Dr. A. Pichler, Private Docent of Theology at the University of Munich. Volume 1. The Byzantine Church. Munich, 1864.

* "In Latin: *Historia Ecclesiastici Schismatis inter Orientem et Occidentem*. Author: Dr. A. Pichler."

* *L'ultimo Papa* by Luigi Gualtieri. Milan, 1864.

* *Poche riflessioni sulla questione del giorno, circa il Cappellano Maggiore e Clero Palatino di Napoli; et id genus similia.* (A few reflections on the question of the day, concerning the Chief Chaplain and the Palatine Clergy of Naples; and similar matters.)

[*Latin ed. p. 48*]

48 DECREES OF THE INDEX. Therefore, no one, of whatever rank and condition, should dare to publish, or, having published, to read or retain the aforementioned works, in any place or language whatsoever; but rather, they are bound to deliver them to the Ordinaries of the places, or to the Inquisitors of heretical depravity, under the penalties indicated in the Index of prohibited books. These matters, having been reported to the MOST HOLY LORD OUR POPE PIUS X by me, S. I. C., from the Secret Archives, HIS HOLINESS approved the Decree and ordered it to be promulgated. In witness whereof, etc. Given in Rome on the 14th of March, 1865. ANTONINUS Cardinal DE LUCA, Prefect. Fr. Amgeltjs Vincentius Modena, Order of Preachers, S.'Ind., Congregation of the Secret Archives. In place

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of the Seal. And on the 15th of March, 1865, the aforementioned Decree was affixed and published at S. Maria sopra Minerva, the Basilica of the Prince of the Apostles, the Palace of the Holy Office, the Innocentian Curia, and in other customary places in the city, by me, Aloysius Serafini, Apostolic Cursist, and Philip Ossani, Major Cursist. DECREE. – Wednesday, the 13th of June, 1865. The Holy Congregation of the Most Eminent and Reverend Cardinals of the Holy Roman Church, by order of the MOST HOLY LORD OUR POPE PIUS IX and the Holy Apostolic See, having considered the works of corrupt doctrine, and their prohibition, suppression, expurgation, and permission throughout the Christian Republic, condemned and condemns, prohibits and prohibits, or orders that other works, already condemned and prohibited, be referred to the Index of prohibited books, the following works: *Memorie di Scipione De'Ricci Vescovo di Prato e Pistoia, scritte da lui medesimo, e pubblicate con documenti da Agenore Gelli. Vol. 2. Firenze Felice le Monier 1865.* *Angelo: Romance original, par Francisco De Moura Secio. Prohib. Decr. 13 Martii 1865.* *Elementos de Direito Ecclesiastico portuguez, pelo Dr. Bernardino T. da S. Carneiro 1865.*

[*Latin ed. p. 49*]

DECREES OF THE INDEX. 4. A letter to the Archbishop of Paris, concerning the state of the Church before and after the Convention of September 15, 1864. Paris, Imprimerie de V. Coupy et C. Prohibited by Decree. Tuesday, March 13, 1865. *Prisca*, that is, the First Martyr of Rome, a strictly historical account of the first century of the Church, by B. N. B. 1864. Politics in Confession, that is, the Encyclical and the Syllabus in relation to the Jubilee of 1865; Observations of the Parish Priest Mongini, Knight, D. Pietro, addressed to the Most Reverend Bishop of Novara, to His Eminence Cardinal Patrizi, and to other of their colleagues in the Catholic Episcopate. Turin, 1865. Prohibited by Decree of the Holy Office. May 4, 1865. The author of the work entitled *The Parish According to the Holy Canons*, by M. L. Malet, parish priest of Mont-de-Marsan, Paris, Jacques Lecoffre, Bookseller and Publisher, 1864. "Until it is corrected; He commendably submitted [himself]." Therefore, no one of whatever rank or condition, should dare to condemn and proscribe the aforementioned works, in any place and in any language, or to publish them, or to read or retain them after they have been published; but rather, they are to be handed over to the Ordinaries of the places, or to the Inquisitors of heretical depravity, under the penalties indicated in the Index of Prohibited Books. These things, having been related to the Most Holy Lord Our Pope Pius IX by me, the undersigned, S. I. C., from the Secret Archives, His Holiness approved the Decree, and commanded it to be promulgated. In whose faith, etc. Given in Rome, on June 3, 1865. ANTONINUS Cardinal DE LUCA, Prefect. Fr. ANGELUS VINCENTIUS MODENA, of the Order of Preachers, Secretary of the Congregation of the Secret. Place. Day. Seal. June 16, 1865. The aforementioned Decree was af-

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fixed and published at Santa Maria sopra Minerva, the Basilica of the Prince of the Apostles, the Palace of the Holy Office, the Innocentian Curia, and in other customary places in the City, by me, Aloysius Serafini, Apostolic Cursist, and Philippus Ossani, Magister Cursus. Acts, volume I, part I.

[*Latin ed. p. 50*]

5. APPENDIX I. CONCERNING THE NORMS TO BE OBSERVED BY THE HOLY CONGREGATION, IN GRANTING THE FACULTY OF REPEATED MASSES TO THE PEOPLE, AND IN EXPLAINING THE MYSTERIES OF RELIGION REGARDING THE REPEATING OF MASSES, the Constitution *Pastoralis Romani* of Pope Benedict XIV, chapter 5 and 6, which we have read, declared that those who had always obtained from the Holy See the faculty of repeating Mass, considered the Holy Sacrifice as if it were always present before their eyes, and that this matter had been explained by the Most Reverend Pontiff, the Bishop of Oscensi, who, praising the reason for this, and judging it to be entirely suitable to the needs of the clergy, and also to the benefit of the people, and that it was entirely fitting for priests to repeat Mass, especially when the needs of others required it, and that a parish priest could not, without great detriment, perform this duty, which had been entrusted to him, and that therefore, the rectors themselves would sometimes allow another priest to repeat Mass on feast days. The Bishop, taking advantage of this opportunity, discussed with the Most Reverend Pontiff the reasons for this, and added, "Parishes sometimes have a need for another Mass to be celebrated," and the Most Reverend Pontiff, after considering the matter, said, "It is not necessary for another priest to celebrate Mass, unless there is a true need for it." He then added, "Those who are appointed to celebrate Mass in churches are subject to the orders of the rectors, and they must obey them." The Most Reverend Pontiff also demonstrated that the custom of repeating Mass in churches was a very ancient one, as can be seen from the Constitution *Pastoralis Romani* of Pope Benedict XIV. Furthermore, the Most Reverend Pontiff stated that the custom of repeating Mass in churches is in agreement with the teachings of the Church, and that it is beneficial to the faithful. Therefore, it is fitting to consider the reasons why it is beneficial to repeat Mass in churches, and why it is necessary for a priest to be present to celebrate Mass in such cases. The Most Reverend Pontiff also added that the custom of repeating Mass in churches is in agreement with the teachings of the Church, and that it is beneficial to the faithful. Therefore, it is fitting to consider the reasons why it is beneficial to repeat Mass in churches, and why it is necessary for a priest to be present to celebrate Mass in such cases.

[*Latin ed. p. 51*]

51. It is a custom, indeed, that the parish priest provide for the poor; but the precept concerning the offering for the Mass should not be doubted

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in the most serious of cases. In another way, the decree of the Council concerning the Sacrifice of the Mass, which establishes the necessity of an offering for the Mass celebrated, is explained: because of this aforementioned alms, the priest offers the Mass. And it is fitting: for even if the celebrant is poor, he should receive something as an offering, since it is written: "Si illum adiutant, tantum orare non sed simplices utilitate." That is to say, if they assist him, they should do so not merely to pray, but also with some practical benefit. In some villages, and on certain days, the priest and the other priests are compelled to celebrate Mass, especially on feast days. The reason is this: when there are many expenses to be incurred, the necessity of an offering arises before any expenses are admitted. Therefore, is it truly the case that the parish priests are so pressed by poverty that they cannot provide for others? Firstly, if the poverty is so great that they cannot provide, the Bishop, with his authority, can add a stipend to the priest who celebrates the Mass, according to the fourth canon of the Council of Trent, session 2. As Engel wisely notes in *Decretalium de Celeb.*, book 1, chapter 10, "the alms given to the priest for the Mass should be wisely considered." Secondly, if the revenues are entirely insufficient, it should be considered whether the people themselves are also poor. For just as the Bishop can provide for the priest so that he may celebrate the Sacred Mysteries for the people, so too can the people provide a stipend for the priest who celebrates the Mass. As is read in the Council of Trent, session 2, canon 3: "Those, at least, who are accustomed to attend the solemn [Masses]..." The Council also mentions this in chapter 1, canon 4, concerning the reform, where it is stated that "the Bishop should see to it that Mass be celebrated on Sundays and feast days." This is a difficult matter, and the precept seems to be applied unjustly to those who are poor. In such a case, the people should provide something for the support of the ministers, so that they may receive sustenance. However, if the people are unable to contribute, the priest will be compelled to celebrate the Mass without any offering, because it is his duty to offer the sacrifice. If it is difficult for the priest to celebrate the Mass, the Bishop should see to it that other priests are present, so that the people may be assisted. It is not fitting that one priest should be compelled to celebrate the Mass on feast days if he is poor, because this would not benefit the people. Paschaligus, who wrote on this subject, explains and understands it in this way: "It seems that everything is connected." If this were the case, then the brother, from the alms which he generously gives to the poor, would provide a stipend for the priests to perform the divine service. But in no way should the parish priests be compelled to do this, if there is no other priest available to minister to the people on feast days. In response to the aforementioned complaints, the author refutes the first

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[point].

[*Latin ed. p. 52*]

APPENDIX I. Concerning the Catechism and the Mysteries of Faith, which can be explained by his ministry, either to guests and those traveling; and also to the Priest who has not heard, or to the Bishop who has not been able to attend, because he is present. Exceptions are made for Missionaries, and sometimes a priest may be granted permission to celebrate Mass, if he is able to administer the Sacraments. No Mass is to be celebrated unless a Bishop is present, unless it is a matter of necessity. And it is reported that the words of the Holy See, in the business of the Congregation and in consultations with Bishops on October 25th, concerned the manner of granting "licenses" and "privileges" to "celebrate Mass." Also, concerning other cases, in which, either for the sake of the place, or for other reasons, it is not necessary to celebrate Mass in the same manner... and that this is not done by force, but rather by presumption.

From the work "DE SACRIFICIO MISSAE." From the fifth chapter of this work, the following is evident. The Supreme Pontiff rejects certain very broad opinions of writers, who devise cases in which it is said that Mass should be celebrated when there is no true necessity.

(1) This chapter 6 cites, among other things, impediments or difficulties that are sometimes encountered, and it is surprising that these are resolved. It rejects a third opinion, taken from the Council of Trent, which states that there are very few priests, and that in some cases, they cannot say Mass, or they can say it, but it is not necessary.

However, it is said that it can be postponed, or that it can be done in such a way that it happens. And therefore, it concludes: "Great care must be taken, so that, for example, in places where the priest is legally able to hear confessions, the Congregation should act with discretion in granting permissions."

Another case, which is almost impossible, is that of a prelate, who has the faculty to celebrate Mass on a feast day, and another priest is also able to celebrate Mass on that day. This case is mentioned in n. 356, where it is said that in cases of necessity, such as when there is a scarcity of priests, or when the faithful are deprived of Mass due to the persecution of heretics, it is necessary for a priest to celebrate two Masses."

And in this matter, the decree of the Council of Trent, held in 1284, under the words of Saint Martin, states: "IV. If all the parishioners cannot come together for one Mass, because they live in different places, far from the Church, as is the case in the mountains, and there are not two priests in the Church, and the first Mass has been celebrated, then the parishioners who come later may request that another Mass be celebrated. However, if, after the reception of the Body and Blood in the first Mass, the distribu-

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tion has taken place, then the second Mass should not be celebrated in the aforementioned cases."

In the sixth chapter (1) of his book IV, treatise III, on the Eucharist, chapter 3, Saint Alphonsus truly states that it is permissible to celebrate Mass outside of the church.

[*Latin ed. p. 53*]

APPENDIX I. Concerning the places in which the Holy Mass may be celebrated, the Pontifex has the following in Canon 53: "If the Mass is celebrated where there is no altar, it is permissible, as the authors say, to celebrate the Mass on the seashore, always, however, on a consecrated stone; but it is forbidden to celebrate the Mass anywhere else, as in the sea or a river." Furthermore, it is not permitted to celebrate the Mass in public or private places, even if a certain altar is erected there, unless a portable altar is used, without a special privilege. These exceptions to the law are made for the following reasons: for in such cases, it is easily understood what places are suitable for celebrating the sacrifice; for it must be examined whether the place in which the Mass is to be celebrated is consecrated, and whether it lacks any indecorum; and, if the altar is not consecrated, the Holy Mass is altogether forbidden to be celebrated there. As it is not necessary to sing or recite the Mass in those places where it is not customary, unless necessity demands it, the Church, considering the dignity of the Holy Mass, allows it to be celebrated in places that are not of the highest rank, provided that the circumstances are such that the faithful can attend. Furthermore, several Masses may be celebrated on festive days, even if they are celebrated in different places, provided that the faithful who are present are not hindered. Also, even if people live in different places and are distant from each other, they may request that the Holy Mass be celebrated for them. The Holy Mass is also permitted to be celebrated in camps, and even among infidels, provided that the faithful are present. However, it is forbidden for several parishes to celebrate the Holy Mass at the same time, unless there is a special reason. It is also forbidden for the clergy to celebrate the Holy Mass in a place where the faithful are not present, unless there is a necessity. The authors of the Catholic Religion also mention three cases in which the Holy Mass may be celebrated, even if it is not customary. And we grant, according to this law, that the Holy Mass may be celebrated in the following cases:

I. When there is a lack of priests. In such cases, the Holy Mass may be celebrated by a layperson, provided that he has been properly instructed.

II. When the people are unable to attend Mass in the church. In such cases, the Holy Mass may be celebrated in a place where the people can attend.

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(1) By privilege, as the same Pontifex demonstrates there.

[*Latin ed. p. 54*]

54 APPENDIX I. REGARDING DEFICIENCIES – IF ALIA REQUIRES EXTRAORDINARY ASSISTANCE, THIS DEFICIENCY SHOULD NOT BE CONSIDERED A BAR TO THE SACERDOTAL VOCATION, NOR SHOULD IT BE VIEWED AS A DEFECT THAT PREVENTS HER FROM BEING ADEQUATELY PROVIDED FOR, ESPECIALLY IN MEDIA. THERE SHOULD NOT BE ANOTHER PRIEST, BECAUSE ANOTHER PRIEST, BY REASON OF HIS PAROCHIAL DUTIES, MAY BE PRESENT, ALTHOUGH HE MAY NOT BE ABLE TO PERSONALLY ATTEND TO THE NEEDS OF THE COMMUNITY. IN SUCH CASES, TWO PARISHES MAY BE ASSIGNED; OR, FOR REASONS RELATED TO HIS OFFICE, THE BISHOP MAY ASSIGN ANOTHER PRIEST TO CELEBRATE MASS FOR THE PEOPLE, WHERE NECESSARY, AND TO PROVIDE FOR THEIR SPIRITUAL NEEDS. THE DEFICIENCY OF THE PRIEST, WHICH MAY COMPEL HIM TO SOLICIT ALMS, SHOULD NOT BE CONSIDERED A TRUE DEFICIENCY OF THE PRIEST, BUT RATHER A MEANS BY WHICH HE CAN PROVIDE FOR THE NEEDS OF THE COMMUNITY. THEREFORE, EXCLUDING TECHNICAL MATTERS AND THE MYSTERIES OF THE FAITH, THE PEOPLE SHOULD HAVE CONFIDENCE IN THE PRIEST'S ABILITY TO CELEBRATE ANOTHER MASS. IF A DEFICIENCY OF RESOURCES IS PROVED, ASSISTANCE SHOULD BE PROVIDED.

APPENDIX II. REGARDING THE ABDUCTION OF A GIRL. WHEN A VARIETY OF SENTENCES ARE FOUND REGARDING ABDUCTION, THE QUESTION ARISES AS TO WHETHER THE ABDUCTION IS AN IMPEDIMENT, ESPECIALLY WHEN THE GIRL IS CONSENTING. TO ENSURE THAT THIS IS FULLY UNDERSTOOD, THE SACRED CONGREGATION DECLARED THAT THE FOLLOWING SHOULD BE NOTED (2). IT IS BEST TO CONSULT THE ACTS OF THE COUNCIL, WHICH PRESENTED THE FOLLOWING: ST. C. C. CONSIDERED THE CONSENT OF THE GIRL IN THE ACT OF ABDUCTION. THE COUNCIL STATES: "RAPTUS VETUSTA S. C. C. DE 'COMMITTITUR (SIC IN VOTO) CUM CEPTA VERBIS' de rapt. virg. §. si enim MULIERE VOLENTE, leg. unie. C. •> ETIAM IN MULIERE VOLENTE, DUM TANTUM MULIER VOLENTE, NON EST RAPTUS IUXTA TERMINOS IURIS CIVILIS; 'QUAERENDUM EST ADQUOS PROCEDIT FERATUR.' UT ETIAM PROBAT MULIERUM INDUCITUR: DE TEXTUS qui ab me placuit (1) Datum non est in archivio S. C C. reperire hanc resolutionem, quamvis diligenter in illam iuquisivimus. (2) Hoc votum refert Riganti loc.

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supra cit.

[*Latin ed. p. 55*]

APPEN * caus. 36 q. 2 » * concerning women, they are stolen there « those who either seduce, or abduct, AND » cap. concerning abductors caus. 36 q. I, IX II. » CESSARE » THE REASON IS THAT THIS IS ACCORDING TO * A SINGLE LAW * the abductor surrounds her * with arts « « in the words « unless she is troubled, unless she is not only disgraced » BASETC. » AND AFTER ALIA THE SAME. CONSULTED, HE PROCEEDS: * HE HAS THE OPINION » OF DECREE her » about and about being deceived. A B IURIS- « FINALLY, THE TEXT IS CONFIRMED THAT RAPE IS COMMITTED EVEN « WITH THE WOMAN WILLING, AS THE COUNCIL REQUIRES, AS INNAVARRUS SENSES IN CONST. 2, rapt. lib. 5 IN tit. THIS SENTENCE » QUOTING S. THOMAS, WHO SAYS IT IS » A DECEPTION. AND WHAT IS SAID ABOUT MARRIAGE » IT IS UNDERSTOOD THAT THE COUNCIL ALSO » CONSIDERS THE WOMAN WILLING, SO THAT THE AB- DUCTOR IS TO BE CONSIDERED THE WOMAN'S » HUSBAND, FOR THE SAME REASONS. » * cap. with cause, ALTHOUGH IT IS MANIFESTLY PRO- * IT SEEMS THAT IT SHOULD BE ANSWERED IN THIS WAY, EVEN IF THE COUNCIL >● DISAGREES WITH MARRIAGE. THEREFORE, THE WOMAN WHO IS RAP- TED IS ALWAYS CONSIDERED SEDUCED, * THE TEXT GIVES A REASON FOR RAPE, EVEN IF » AND IT EXPRESSLY HOLDS THAT THE AB- DUCTOR, WHO REQUIRES SOME VIOLENCE » SO THAT RAPE IS NOT REMOVED » WITH » » BY THE CONSENT OF THE GIRL, UNLESS » IT IS PRECEDED BY * A TREATISE ON MARRIAGE, AS WILL BE SEEN » THERE. IF IT IS OBJECTED THAT THE COUNCIL » HAS CONSIDERED THE GIRL'S LIBERTY, » MARRIAGE * IF » NO MARRIAGE IS CONTRACTED BY THE AB- DUCTOR, THEN THE RAPE CEASES UNTIL » THIS IF THE GIRL WAS LED TO RAPE BY FORCE, I SAY, ACCORDING TO THE VOTE OF THE JURISTS, THE MOST » PROPER MARRIAGE. » IT IS ANSWERED SECONDLY, THAT TO CONSENT, TO » AND TO CONSENT TO RAPE IS DIFFERENT, AND ALTHOUGH THE GIRL'S » CONSENT DOES NOT CHANGE THE NATURE OF THE RAPE, THIS CONSENT IS NOT » FROM THE INSIDIOUS MAN AND THE RAPE, BUT RATHER IT IS REPEATED THAT WHICH IS NOT CONSENTED » FROM HERE 1 2 5 3 verb. lia- » pina n. 2 0. » RE- QUOTING WELL PERMASCARD, de » prob. vol. 3 conclus. DUM » IT IS DECREED, TO THE OBJECTION THAT THERE WOULD BE, IN THE POWER OF THE PARENTS, -» IT IS TO BE CONSIDERED THAT THE GIRL » CONSENTS: ●» VIOLENCE TO THE WOMAN IS » FIRST, THERE IS NO CONSENT TO ROBBERY, AND THEREFORE IT IS INFERRED, MEDITATING ON THE » VIOLENCE TO THE WOMAN, ALTHOUGH IT MAY SEEM THAT THE WOMAN CONSENTS (1) that

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is, the consent of the girl alone is not sufficient, so that the woman is not considered to have been raped.

[*Latin ed. p. 56*]

56 APPENDIX II. civilis, extorto, qui naturam non destruens, consequitur simam iniuriam a viro. Ex quo puellae, etiam cum consensu, ita violenter inferuntur sub quodam, ut virgines raptrices mulieri comminantur, quia (sunt verbi in lege) hoc ab nequissimi raptor eam puella manum porro iuxta hos si qui ut praecessissent. sideratur, puellae a consentire, sentire matrimonio etc. quo consensu Ait enim aliud con- Quare casus rapina vel furtum das hac ratione a potestate parentum et tutorum subtracta manum raptoris monium iuxta consentire hos concedet creto Et in ad C. quae sub comprehenduntur. materia exempla hanc haberedecisionum resolutionem emis- usque ad nostra tempora. Reperitur quaedam c r . discernen- C. in diei 20 augusti resolutio Mediolanen. 1661 sa- Matrimonii cuius sequens erat facti species « PaulusClemensa Porro » Porta et AnnaMariaaTurre facile quisque » plices huicS. Congreg , alias nar - huiusmodi hanc post sunt, maxime at- puellae, decreto eam prodere. cogatur. terminos Concilii et in deducta, in matri- tradidisse oculis quae sae sese C . eaque veluti* Praestat in hac prae facit verba legis abductiones enim. nisi odiosi* non S. me- nisi dedecus videtur Concilii mulierum, inducitur: tantum criterium racon- velle hominis qui sollicitaverit Ad quae mulieris a raptore intenditur, ut inde mulier, in enim in matrimonium. raptui in velle ipsum circumvenerit tendisse Iurisconsulto aliud est fingi tur, artibus matrimonio et praescindit a in ra- insidiis immutarentur, Consensus absolute aiunt Dixi iuxta hos ter- omnino tractatus de ineundo ptum traducitur. terminos, Subtrahitur raptoris dolo consultor, ptum extat. untegravis- enim puella aparentum potestate, et potestate legem ideo poenas volentis iuxta quae raptum sub de- » rabant contracta inter se sup- fuisse comprehendi. » sponsalia per sententiam cedere vi- factas tres denunciatioverba de futuro. » Post vero C. verbis » nes in procedere etiam in » Parochia mulieris, Gaspar Annae- » mulierevolente dum tamen sitra - » pater et Anna eiusdem patris* » ptus iuxta » impulsu, pro In qua definitione detur allegata resolutio S. illis: «Concilium terminos iuris civilis.» sunt particulae illae cum omnes sint » dum tamen, quae abductiones tis, comprehendi abductiones sub sed iuxta ipsa rescissione coram Ordinario in sponsainstiterunt. » Quare cum resin longum trahere- » tur, mulieris volentem Anna misso obtulit nuncio ad C!e- sese discessuram si ipse eam s e - decreto Con- » a paterna solummodo eas » cumadducturus , certo constituto* ra- » tempore , comprehendi, quae dicuntur lium viri, et duas non exclusivae, eids\iin\ii eant cilii tridentini ; ptus animadvertendae Parochia terminos

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iuris » domo , prope domum suam praestolatus esset. Quapropter as.

[*Latin ed. p. 57*]

57 APPENDIX II. After this, Anne, with Clement, so that the pretended marriage might be carried out, fled secretly around midnight, and went to the houses which were in the parish of the girl Cesarea Fucile, in Usküb. Anne herself, for several years, had rented these houses from S. Stephen. (1). The following day, when questioned by her parish priest a few days before, she stated that she had received a habit, as if it were a sacramental garment, from a certain infamous person, in the presence of those to whom she had spoken about the marriage; and that more than thirty, and even ten, had already heard these words. The girl, with her mother, said that Roccum Sanctem had suddenly taken her away, and that she did not want to marry him, nor her sister. Meanwhile, as the witnesses themselves stated, she was weeping and murmuring, and the marriage and the children already conceived were mentioned. And then, the Vicar General of the Archbishop, after having calmed her spirit with admonitions, said: "After these things, you fled to Usküb." Almost a year later, several people testified unanimously in the court in Milan, that the marriage, of this kind, as contracted above, was invalid; therefore, the spouses, humbly request that this Holy Congregation declare: I. That the abduction, concerning which we speak, did indeed take place. II. That the aforementioned marriage was not validly contracted. To the parish priest: negatively. Item, concerning the Censures of S. Ad, he answered affirmatively. When these things were inquired about, the aforementioned Anne made great cries. The girl, having been quickly examined by her mother on January 7th, stated that, within three days, of which each day would be counted respectively, she would present the aforementioned Roccus to the court, so that he might not be declared subject to the censures which are prescribed against abductions in the Sacred Council, Session 6, and in the Decrees, Session 24, concerning marriage, and again and a third time, on the days of January 9th, 10th, and 11th, in the presence of the aforementioned Roccus, and with contumacious absence, as has been observed, the proceedings were carried out. The abduction and the excommunication edict were affixed on March 1, 1714. Immediately, the aforementioned Roccus, (1) also stated in his account that the Bishop had asked Anne for a declaration of the nullity of the betrothal, due to a disparity of condition, but that the Vicar General had delayed the judgment, hoping that Anne would consent to the marriage. The Bishop had also forbidden the man from approaching Anne's house, so that she might freely resolve the betrothal. Then, however, the man obtained Anne's consent to the betrothal again; having obtained this, he disregarded (these are the words of the Bishop) the precept of not approaching her, and with armed force, he abducted the aforementioned Anne Mariam, against the will of her parents, and fled to a place of refuge, and from there, he was

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prosecuted in both courts.

[*Latin ed. p. 58*]

33. The matter was brought before the Holy Congregation, which ruled that a marriage could be entered into with the aforementioned girl, provided that the Bishop approved, and that a declaration should be made to that effect. Although there was some doubt, it was clear that the girl had not committed any crime, and she had, in fact, consented to the abduction. Therefore, there was no impediment to the marriage, even though it had been carried out without the consent of her parents or close relatives, who had opposed the marriage from the beginning. The girl was placed in the care of an honest woman, so that she might enjoy all freedom, and when questioned, she declared, with a clear mind and without any coercion, that she had not been abducted, and that there was no impediment to the marriage between Bochum and Caesarea. In fact, there was no impediment, as the marriage was not considered to be invalid by the Holy See, pending a decree from the Council. In this case, the Vicar General, after hearing the opposition from the man, reported the matter to the Holy See, along with the two doubts that had arisen, so that the superiors might decide whether the marriage could proceed.

I. In Olomouc, on August 20, 1769, and again on March 1, 1772, a decision was made regarding the marriage of a girl who had been abducted at night. The cause for the marriage was the abduction of a noblewoman.

Does the flight of a woman, in such a case, constitute an impediment to marriage? No. Another decision of this Congregation states that the abduction of a woman, even if she is taken against her will, does not constitute an impediment to marriage, provided that the Holy See does not declare otherwise.

Therefore, in the present case, the Vicar General definitively ruled that there was no impediment to the marriage, and that the girl could be released from her captivity and allowed to marry freely, without any impediment. The girl was placed in the care of an honest woman, so that she might enjoy all freedom, and the man was given the opportunity to present his case before the judge. The man himself declared before the judge that he had not abducted the girl, and that he had no intention of preventing the marriage.

In this case, the Holy See ruled that the marriage could proceed, provided that the girl was given a proper absolution, so that she could enter into marriage without any impediment.

In another case, a soldier abducted a noblewoman.

[*Latin ed. p. 59*]

IX. And having brought her, and having transported her, he made her a certain pledge of safety at his father's house (the father of the man),

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5, 9, concerning the nullity of marriage, the abduction, and then (that is, there) concerning the contrary opinion: he appealed to the Holy Council. It appeared that this Council had been deceived by Satan. After sixteen days, and with two witnesses, they contracted marriage. Then, when they arrived, a doubt arose in the city concerning the validity of this marriage, and the spouses were warned by the Bishop, and prudent men were consulted, so that the woman might return to a safe place. But, these warnings being neglected, Fortalitium, and others, after five months, arrived there, and before the Parish Priest, they declared the marriage null. They gave reasons why the woman did not wish to reveal herself to those who wished to condemn her. The matter was as follows: before the marriage, there existed a situation, and after several years of disputes, the judges, citing the law, declared the marriage null and void. The woman, having been wronged by the man's conduct, and having fled for the sake of her religion, requested a solution to the nullity of the marriage, because she had been abducted by the man. The woman was warned by the Bishop that she should be separated from the man if she had been abducted; but, demonstrating her own free will, she issued a declaration that she had not been abducted, but had gone voluntarily to the house of the tutor. Before the Parish Priest, after a space of several months, and with witnesses, the marriage was renewed. The woman seemed to be willing to live with the man; she appeared to be like a harlot, and was under his power and subject to his alienation. The Canon, who confirmed the testimony of the woman, maintained that in the ecclesiastical courts, the woman, even if abducted by the man, could be considered to have voluntarily entered into the marriage. True, the witnesses stated that the woman had not been forced, but that she had voluntarily entered into the marriage with the man, and that, despite the disputes between the parties, she had made a declaration in which she stated that she had not been abducted. This declaration makes a mockery of the woman, and especially of young girls, who are subjected to abduction and deceit. (According to the proposition of S. C.) There were rumors that the young woman had been subjected to sequestration, and that, according to certain accounts, she had been abducted by force, or subjected to deceitful solicitations. However, there were serious indications that excluded the possibility of abduction, and it was determined that the matter had been fabricated. Meanwhile, the S. C. did not find that there was any doubt about the renewal of the marriage. Then, in a Borussian case, they obtained a sentence from the Bishop of Olomucensem, based on the lack of proper consent. It was asserted that she had freely converted. The Captain of the Castrum declared that he would retain her, and that she was under his power, rather than under the power of the man. Premising this, the first

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proposition concerning the nullity of marriage.

[*Latin ed. p. 60*]

On the 1st of July, in the year of Our Lord 1778, and defined on the same day in the 17th year, on the 8th of June, the following occurred: Francis, although reluctant, was compelled by his mother to go to the monastery. This was the beginning of the affair. Barbara, residing nearby, frequently visited the monastery, where she became acquainted with Xaverius. Barbara, suffering from a malady, often sought the aid of a midwife, and on one occasion, while visiting the monastery, she encountered Francis. The brothers, Francis and Xaverius, frequently visited the monastery, ostensibly to see their sister who had taken vows there. The nuns, on several occasions, engaged in secret conversations with the brothers, revealing their desire to leave the religious life. One day, Barbara, having learned that Francis had ascended to the monastery, approached him in a hidden place, and they embraced. On another day, they arrived at the house of Villam A, and then, the following day, they arrived at Villam B, where the brothers resided. There, after the arrival of the carriage, Ignatius, the elder of the brothers, who had returned from his journey the day before Barbara's arrival, learned that his parents desired the marriage of Francis and Xaverius. Barbara immediately understood that Ignatius's presence signified that one of them would marry, and she also realized that her parents intended for her to marry Xaverius. To further encourage this marriage, the parents related the matter to the brothers. After the matter was reported to the Bishop, and after two attempts to persuade Barbara, who had been sent by her mother, and after Barbara, along with her son, had been instructed by the Mother Superior to consent to the marriage, and after Barbara had shown her willingness to enter into the marriage, the parents, with a maternal heart, presented the conditions to Barbara. These conditions were explained to her, and she declared herself ready to marry. Six years after the marriage, the parents of Barbara, who resided in a certain Villa C, approached the couple, who were living with Barbara's daughter, and they requested that the marriage be declared null and void by the ecclesiastical court, so that Barbara could accompany Francis on his journey. After the first stage of the legal proceedings, and in the absence of the mother, a judgment was rendered in favor of the validity of the marriage.

[*Latin ed. p. 61*]

Concerning Marriages; in the second and third cases, a young girl, having been dedicated to the service of a religious order, was declared null by a sentence of the ecclesiastical court, following a petition made by the girl herself, based on the grounds that the marriage was invalid. Subsequently, an appeal was lodged by the man's side with the Sacred Congregation,

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under the heading "Whether the marriage is valid or not." The Sacred Congregation, after further deliberation, responded that it had examined the matter more closely and had come to the conclusion that the marriage was indeed invalid, based on the girl's vow. The man, having been informed of this, and after a brief conversation with the girl in the evening, took her to her maternal home, without the knowledge of her parents. The girl, weakened by her condition, was then handed over to the care of a Matrona, who, despite the girl's wishes and the protests of her relatives, forced her to marry the man. The man, now named Sempronius, had indeed abducted the girl from the monastery, and the unexpected abduction brought about a fortune for the girl. The girl, however, was not happy with the situation, and she expressed her desire to return to her former life. The Matrona, however, insisted that the girl should marry Sempronius. The girl was then taken to another city, B, and placed in the home of a certain legal advisor. Finally, the girl, with the help of a certain A, petitioned the Sacred Congregation for a declaration of nullity of the marriage. Other cases of this kind are found in the records of the Sacred Congregation, such as the case of Montis Regalis Beneventana, 1760, dub. 2. Another recent case involves a nobleman, Sempronius, who ardently desired to marry a noble girl. He abducted her from her home and, after twelve days, returned her to her former home. There, under the constant pressure of Sempronius, and with the consent of her uncle, the girl was married to him before a priest, witnesses, and other noblemen, with the knowledge and approval of the Bishop; although the girl had repeatedly stated that she did not wish to marry without her mother's blessing. The couple lived together for six years, but the marriage was never consummated. Finally, a dispute arose regarding the validity of the marriage, and the girl, fearing for the future of her children, sought a declaration of nullity. The Sacred Congregation responded affirmatively, stating that the marriage was indeed invalid, and that the rights of the children would remain intact. In another case, discussed on June 18, 1859, the Sacred Congregation declared that the marriage was valid, provided that certain conditions were met. In a more recent case, discussed on June 1, 1860, the Sacred Congregation declared that the marriage was invalid, and that the girl's petition had been granted.

[*Latin ed. p. 62*]

APPENDIX I I . By law. You have in this example a girl who, after being enticed by various solicitations, is then, by a sudden decree of the Council of Trent, session 24, chapter 6 concerning reforms, taken from her maternal home, by a hostile act, causing an injury to the girl's marriage prospects, and this bears a resemblance to the case in which a woman is said to be abducted. For abduction is an impediment introduced by the Church, not to free the girl for marriage, but rather to retain her freedom under the power of the man, so that she may be drawn into marriage by deceitful

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means; for a woman who is taken away by force or deceit is compelled to marry the one who abducted her, and therefore her freedom is restricted.

From all of this, it seems possible to conclude:

I. That an abduction which falls under such a decree of the Council does not occur, when the girl's freedom is restricted before the abduction takes place, concerning the commencement of marriage. In this case, the man has the right to betroth the woman in this hostile manner, and the woman is obligated to consent to the marriage.

II. That this abduction cannot be verified, if the man, without deceit, takes the woman away, from which it follows that the marriage cannot be rightfully contracted with the abductor, not because of the lack of parental consent, but simply because the girl's freedom, which the Council wisely intended to restore to the girl, has not been restored, so that she may be separated from the abductor in a safe place, and be established in freedom.

III. That this abduction cannot be verified, if it is not the man, but the woman who, wisely, does not consent to the solicitations of the man, so that she may be taken away from him. In these two cases, the woman's flight with the man is to be considered a more free marriage than an abduction.

But if it is objected that the woman consents to the abduction, and therefore seems to consent to the marriage, because she consents to the abduction for the sake of marriage, and therefore, being separated from her parents, she is never considered to be acting rationally in the abduction that we are discussing in the case of a woman who consents; we respond: the resolution of this question depends on individual circumstances.

[*Latin ed. p. 63*]

APPENDIX IX, section 63, states that the entire matter depends on the circumstances. If she adheres [to the abductor], then it is truly an abduction; for a woman is thus led into marriage, so that she may more freely enter into marriage of her own accord and against the will of her parents, and she uses the means of abduction to remove obstacles, which she perhaps would never have overcome otherwise. In this sense, it appears to be an abduction, but rather a simple escape, although some injury may be done to the parents, one of which is that she is deceived. What is referred to above is explained on page 21, and what is explained on pages 59 and 60. Two resolutions of the Sacred Congregation are mentioned in this appendix.

This method of acting, employed by those who abduct young women, can be compared to the methods used by those who catch fish and birds with nets. They use cunning and deceitful solicitations to extract the young woman's consent, so that, despising her parents, she may be carried off. No one can deny that, just as an abduction is not committed when a young woman is taken away against the will of her parents, who are either unaware or in disagreement, so also, when a young woman consents to mar-

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riage, the act of abduction is not seen, but rather the circumvention of the parents. This is our opinion.

APPENDIX REGARDING THE HOLY APOSTOLIC PENITENTIARY.

Among the many tribunals which the Holy See has, which are used to deal with unexpected events and circumstances, there is the Holy Apostolic Penitentiary. Therefore, everyone can see how useful it is, and for the good of the Church, and for the benefit of the faithful; not only is it well known by name, and as if in a court, but also its practical knowledge is known. It is also the place where matters are dealt with and resolved which concern the conscience of the faithful, and which are therefore of great importance.

[*Latin ed. p. 64*]

64. In matters concerning appeals to the Sacred Penitentiary, nine months are secretly considered, so that one may dispute which is more secret, whether it is the *Constitution* of Benedict XIV, or the beginning of the *Pastor Bonus*: but indeed, many of the seals of the sacramental confession are entirely B.B. [i.e., *bullae*, papal bulls]. The oracles of the Pontiffs are explained there, which are found in the same Penitentiary proceedings, concerning particular or lacking faculties, which also pertain to the external forum, especially matrimonial dispensations which are granted to the poor. Therefore, since these matters must be directed according to the established practice, among these, only those which are determined by the principles of public law, by which the Holy Penitentiary is directed, will be permitted to be carried out, and some of these, for the sake of usefulness, we will refer to, as an appendix in the foot of the books. For the Holy Penitentiary, as much as possible, will diligently take care to explain, according to what is established, in order that all may know.

[*Latin ed. p. 65*]

65 FROM S, CONGREGATIONE CONCILII. DISTRIBUTIONUM. December 30, 1862. Session 24, chapter 12, concerning the Reform Compendium. In the cathedral church of A, certain difficulties had arisen concerning the daily distributions which the Canons received while absent from the choir due to various reasons, especially in light of the customs of their church. In order that these difficulties might be resolved according to law, the Archdeacon of that church sent a suppliant petition to the Roman Pontiff, in which various requests were contained. After being referred by the Most Holy to the Sacred Congregation of Councils, and the Sacred Congregation, in accordance with custom, requested information and an opinion from the Archbishop of A, and after having heard the chapter in writing regarding the stated titles of exemption, the same Archbishop, presenting the responses of the Chapters, made his mind known concerning all matters. The reasons of the Chapters

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will be discussed in the following synopsis. Therefore, all the requests of the Chapters were arranged according to the established order, with the doubts placed at the end. Synopsis of the discussion. More learned matters were presented concerning this subject, and almost all of them will be explained here. Before dealing with the individual doubts, the following general decrees were presented. Boniface VIII, in chapter *unie*, in paragraph 6, decreed as follows: "The custom whereby Canons... or Clerics of cathedrals... receive the daily distributions (which are otherwise called manual benefits or provisions, and are granted only to those who reside) in whatever places... are present, even if they do not participate in the divine offices, is entirely disapproved of: We decree that the daily distributions themselves, whatever they may consist of, be granted to the Canons... of the churches." *Acta*, volume I, page U.

[*Latin ed. p. 66*]

66. OF DISTRIBUTIONS. Those who have performed the same offices within the churches themselves shall receive [a portion]. But whoever, otherwise, has received anything from these distributions (except those for whom infirmity, or a just and reasonable bodily necessity, or evident benefit to the Church, provides an excuse), shall not acquire ownership of such things, nor shall he make them his own, but rather he shall be held accountable for the restitution of all that he has received contrary to this Constitution. Furthermore, the Council of Trent decreed in Session 24, on Reform, chapter 12. Those who have been present at the appointed hours shall receive [a portion]; the rest, without any collusion or exemption, shall be deprived of this, according to the decree of Boniface VIII, which begins with the words "Consuetudinem," which the Holy Synod restores to use, notwithstanding any statutes or customs. Regarding what has been generally provided, the following was debated concerning particular doubts.

REGARDING THE FIRST DOUBT. Since the Canons were more or less accustomed to [receiving a portion], an observation was made concerning this custom, that it does not support the reception of distributions in the absence from the choir; this was inferred both from the decree of Boniface VIII, according to which only those who are absent can receive distributions if infirmity, or a just and reasonable bodily necessity, or evident benefit to the Church, excuses them, and from the aforementioned decree of the Council. Furthermore, the authority of Fagnani was brought to bear, who in book 3, decrees on Prebends, chapter "licet," number 71, says, "For this custom is not valid, whether it was introduced before the Constitution of Boniface VIII or after." And the Holy Congregation has also frequently declared that this memorable custom has been abolished.

Regarding the Canons who hear confessions during the time of the divine office, it was said that they should not be considered present in the choir. For the Council of Trent, in Session 24, chapter 8, excepts only the

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Confessionary, stating: "Whoever hears confessions in the church, meanwhile, shall be considered present in the choir." And this arrangement applies only to those Canons who are required, by the necessity of their office, to hear confessions. Thus, the Holy Congregation, in Lucana, on March 8, 1635, judged that: "The Orator, who is assigned to the place of the Confessionary to hear confessions by necessity, and for a legitimate reason, by the Bishop, while during the time of his assignment he actually hears confessions, is to receive the daily distributions, just as if he were present in the divine office in the choir."

[*Latin ed. p. 67*]

DISTRIBUTIONS. 67 tom. 15/1). 175 fol.). Also, in *Nullius Putignani* of March 6, 1741, regarding question IV; and in *Maceraten.* of December 20, 1768. However, the reasons proposed, whether based on custom or on some decree of the Archbishop N. (who, in the Visitation of 1707, had confirmed this custom), are rejected, because neither custom nor an Episcopal decree can derogate from this common law, except in the case soon to be mentioned, nor in the case in which, by the law of the foundation, the canons are exempted from receiving these distributions when they hear confessions; in other cases, they must be subject to these distributions.

REGARDING THE SECOND QUESTION. Given the diversity of opinions found among the authors concerning those who, during the time of the Divine Office, celebrate Mass, as Garzias de Benef. p. 3, cap. 2, § 1, n. 4; Antonelii de cler. non resid. l. 3, c. 16, n. 25; Moneta de distrib. p. i, quaest. ii, n. 52; Scarfant. ad Ceccoper. lib. 3, tit. 2, n. 13 and 14, where he teaches, along with others, that "a just cause can introduce a custom whereby canons, while celebrating the Divine Office, may receive distributions; for the whole is divine worship"; while others say that such a custom should be rejected; Covarruvias, *Rarior, resolut*, lib. 4, n. 3, a. 2; Gonzalez in lib. 4, decret., § 3, n. 18: "it is said that many teach that canons, leaving the choir to privately administer the Sacrament, lose the distributions, unless they are compelled by the one to whom it pertains to perform this duty at that hour." Fagnanus, lib. 3, Decret., c. licet, n. 118; Passerinus, in cap. Consuetudinem de Chr. non resid. in 6 reg. 10, n. 163; Benedict XIV, *Instit. eccles.* 107, n. 76. This opinion has long been taught by the Holy Congregation; for, in a question proposed in the year 1583, these words were used: "Because sometimes in cathedrals and collegiate churches, there are some canons or other officials who have chaplaincies in them, or who hold them in title, or simply as mercenaries; it is asked whether, at the time when they celebrate in these chaplaincies, they ought to receive distributions, even if they are absent."

(1) The older resolutions of the Holy Congregation, which do not exist in that collection, to which the title *Thesaurus resolutionum S. C.* is given, if they are the most ancient, can be more easily found. For such codes have an

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index. The *Thesaurus*, when cited, indicates not only the resolution, but also the true resolution, which was made a public book of Decrees, and the page on which it is found, by R. P. Benedict XIV, while he was in office, begins from the year 1718.

[*Latin ed. p. 68*]

"Concerning Distributions." From the choir; and what about those Canons who celebrate in the same church, for the sake of their devotion? Can they, and when, receive distributions if, for this reason, they are absent from the choir? And if not, what if they are ordered by the Superior of the church to celebrate at that time? This matter was brought before the Most Holy Father, and the response was: The Most Holy Father, with the opinion of the Holy Congregation of Councils, declared that they cannot, unless the Superiors have so ordered; but He wished to admonish those Superiors to abstain from such orders. And according to the course of this declaration, many resolutions followed, as can be seen in Inter Omnes, February 23rd; and in Juxta Normam, November 23rd of the same year, in which a rescript was issued concerning the question: "Whether the custom of Canons celebrating Masses during the canonical hours is permissible." The answer was: No, unless with the legitimate permission of the Superior. Specifically, in Sacrosancti, February 1817, and in Anagnina, November 20, 1819, in the first of which, concerning the question: "Whether Canons who are absent in order to celebrate Mass during the choral office can receive the daily distributions," the Fathers answered: No, unless with the permission of the Prefect, for the good of the people; and in the latter, they maintained a positive opinion, namely, that the Constitutions of the chapter, which are Constitutions approved by the Apostolic See, expressly require a reason of necessity, in order that the Prefect may grant permission to be absent from the choir.

REGARDING THE FOURTH QUESTION.

Premised by the decree of the Council of Trent, session 24, chapter 11, concerning the Reform, in which it is stated that Canons must assist and serve the Bishop celebrating or performing other pontifical functions, the authority of Fagnani was cited, who in I, III, decretum de ecclesiis, n. 168, concerning prebends, argues that daily distributions are due to Canons who are bound to assist and serve the Bishop celebrating, both in the cathedral and in other places in the city, and in its suburbs. This is also further explained by Benedict XIV in Institutiones ecclesiasticae, 107, § 9, n. 60, who teaches that Canons who are assisting the Bishop solemnly celebrating in the cathedral must be present to the same Bishop, even outside the cathedral, whether he is performing ordinations or other pontifical functions. Indeed, the Holy Congregation had previously affirmed this doctrine, es-

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pecially in Licentia, August 1, 1641, the resolution of which can be seen at the end.

[*Latin ed. p. 69*]

DISTRIBUTIONS. 69. It is clear that, given such circumstances, the Canons, being present and serving the Bishop, fulfill a necessary duty according to the prescriptions of the Council of Trent, and therefore, it can be seen that the Canons serving the Bishop, even when he celebrates only a private Mass, do not profit from distributions, as the Holy Congregation also defined in a rescript of Pisa, January 25, 1625, *lib. 12 Decret*, p. 253. In a certain case, concerning the question: "Do Canons serving the Bishop, when he celebrates a private Mass, profit from daily distributions?" it was decided that they do not profit. Furthermore, in another case, it was decided likewise. REGARDING THE FOURTH QUESTION. The Canons inquired whether they could profit from daily distributions, those who remain with the Archbishop for the purpose of carrying out the affairs of the Curia, and also those who accompany the Archbishop through various diocesan locations, or elsewhere. To clarify these matters, it was noted, first, from the chapter "Concerning those Clerks who do not reside," and second, from the chapter "Concerning the word 'signify'." The Canons whose services are used by the Bishops are, during this service, to be considered as present for the purpose of profiting from the fruits of their benefices, but not from the provisions (or distributions) which are not customarily given to those who are absent, nor from manual benefits which are given only to those who are present at the divine services. This is not contrary to what was established by the Council of Trent, session 24, chapter 12. Nor did the Holy Council decide otherwise. Indeed, in Sorana, 1587, *lib. 3 Decret*, p. 301, it was defined: "Canons serving Bishops profit from the fruits of their benefices, but not from daily distributions." And in Brixen, September 18, 1626, *lib. 13 Decret*, p. 3, it was decided: "One or two Canons serving the Bishop, according to the privilege granted to favor Bishops, in the chapter 'Concerning others'..." profit from the endowment (or fruits) of their canonries, but not from daily distributions; if, however, the income consists entirely of distributions, they profit only from two-thirds of them. Nor was it otherwise decreed by the Holy Council for those Canons who accompany the Bishop during a visitation of the diocese. Benedict XIV, *Instit. eccles.*, 107, n. 59. Fagnanus, *loc. cit.*, n. 109. And considering only the smallness of the income, the Holy Congregation granted daily distributions to certain Canons accompanying the Bishop during a visitation, in a rescript of S. Miniatis, February 8, 1817.

[*Latin ed. p. 70*]

70. REGARDING THE FIFTH DOUBT. The matter concerning the fifth doubt related to the review of the accounts of the chapter and whether

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these accounts should be considered among the reasons for being absent from the choir and receiving distributions, according to the Decree of Boniface VIII. This review pertains to the benefit of the Church. Indeed, according to the same Decree, the Church is understood to be that of whose distributions the receiving is questioned. Fagnanus, in the cited work, number 160. Therefore, it cannot be doubted that the matter belongs to the Chapter, and consequently to the chapter of the Church, so that the administration of its goods may proceed correctly, and so that, at the appointed times, accounts of the administration may be rendered; it is not without reason that the Canons, who are assigned to the review of accounts by the Chapter, seem to be entitled to distributions during their absence, as the Holy Congregation taught in the Panormitana of the year 1588, [Z. 5 Decret.], openly declaring: "The distributions for each day are due to the lecturer for the time during which he is truly absent for the business of the Chapter." However, concerning the time to be determined for expenses incurred for such business, the Holy Congregation considered it to be the duty of the Ordinary, as stated in the Segobien of the year 1539, book 5, Decret., page 287. Furthermore, in the present case, the Archbishop considered fifteen days to be sufficient.

REGARDING THE SIXTH DOUBT. The Canons inquired whether those who exercise the ministry of preaching within the boundaries of the parish could receive daily distributions. In favor of an affirmative answer, they asserted that the care of souls belongs to the Chapter; however, the Archbishop objected to this assertion. It was observed, however, that this concerned the ministry of preaching the Word of God, which is not an adjunct to the provision. Therefore, according to what Fagnanus reports from the teaching of the Holy Congregation, in the cited work, number 114, Canons who read or preach should not enjoy distributions, although they are not prevented from deriving benefits from the provisions.

REGARDING THE SEVENTH DOUBT. In order to maintain the custom whereby the Canons who were examiners at synods received distributions while absent from the choir in order to examine new candidates for ordination and to approve confessors, both the Archbishop and the Chapter insisted on the necessity of this, stating that it could not be done otherwise than by assigning others among the clergy to the office of examiners. However, it was noted that, although Barbosa in his work *De Canon, et dign.*, chapter 24, number 9, and Zachias in *De resid. Eccles.*, title *de beneficiai*, number 13, teach that examiners who are absent from the choir due to the reason of the examination, enjoy distributions; nevertheless, such receipt...

[*Latin ed. p. 71*]

DISTRIBUTIONS. It is well known that the Sacred Congregation of the Council has consistently denied distributions. As can be seen in the document from Brixia, June 19, 1638, book 16, reply 38; in Cremona, September

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20, 1642, book 17, decree, page 95; and in Fagnanus, in the same place, number 100 and 104, who adds that such examiners of distributions do not receive distributions, even if there is a contrary custom established by a diocesan synod.

REGARDING THE EIGHTH DOUBT. It is noted concerning the eighth doubt that many privileges are granted to Masters of Canon Law or Sacred Theology by common law, not excluding the dispensation from singing in the choir, as is stated in chapter 5, concerning those who are excused, regarding Masters. These privileges are confirmed by the Council of Trent itself, chapter 1, session 5, concerning reforms. However, such privileges, which are only a matter of benefits, do not pertain to distributions. See the Glossa in the cited chapter 5 concerning Masters, and the Sacred Congregation of the Council in Feretrana, July 12, 1817, and elsewhere. If, in this case, no, or very few, benefits were to be granted, then a Canon who enjoys this privilege would lose one-third of his entire income, retaining only two-thirds for himself, according to what Fagnanus teaches concerning those absent for the sake of study, in the same place, number 127, by which Benedict XIV, in Instruction 107, number 72, equates Masters of Sacred Theology or Canon Law. The same is taught specifically by the Sacred Congregation of the Council concerning Professors teaching in Seminaries, in Lima, December 18, 1627, book 15, decree, page 366. Regarding Rectors of Seminaries, Fagnanus, in the same place, number 109, taught that they do not receive distributions. It is also observed that perhaps no case can be found in the Treasury of Resolutions in which Rectors of Seminaries have legally claimed daily distributions; and it seemed that the same should be said of Canons who examine young men in traditional or liberal arts. Furthermore, whatever may be the case, it is the practice of the Sacred Congregation of the Council that, considering particular circumstances, it sometimes grants such Canons indulgences for absence from the choir, which indulgences are often restricted by a clause such as "with the loss of distributions," or another similar condition, which is not to be cited as an example.

REGARDING THE NINTH DOUBT. The answer concerning the ninth doubt descends, as it were, from what has been said in the fifth doubt. For those who perform the office of Pro-vicar or Actuary in the Curia, although they are engaged in all the affairs of the Diocese, are nevertheless absent from the choir for the benefit of that church from which they receive distributions.

[*Latin ed. p. 72*]

72. The *distributiones* [distributions] demand payment; therefore, those who are absent cannot legitimately enjoy them. And to confirm this, the example of a vicar general was cited, regarding which the Sacred Congregation of the Council responded in Tarentina, on May 9, 1671:

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"Adhering to previous declarations, it is not lawful for a canon who serves the Bishop in the office of vicar to receive daily distributions for those hours of divine office in which he is absent." From this, Fagnanus, in the cited passage, number 12, based on the teaching of the Sacred Congregation, warns that this does not help in such a case, nor does it support a custom or one that has been in force from time immemorial.

REGARDING THE FORTIETH AND ELEVENTH DOUBTS. After these matters, nothing further was observed concerning the two subsequent doubts, since enough has already been stated about these in the preceding sections.

REGARDING THE TWELFTH DOUBT. The archdeacon, acting on behalf of all the canons, requested the Most Holy Father to deign to grant full absolution and remission regarding distributions received illegitimately, whenever customs introduced should not deserve to be approved. Regarding this supplication, it was observed that improperly received distributions should be returned. Ferraris, *De Distributionibus*, article 2. The Sacred Congregation, in Macerata, on January 24 and March 14, 1778: "However, in the present case, we are dealing with canons who, in good faith, as it seemed, adhered to the customs of their church, and who received distributions that they were not due, and who consumed them in good faith. Furthermore, in these circumstances, they do not seem to be blameworthy, so that, through absolution and remission, their consciences may be relieved."

Doubts:

I. "Whether and how canons, during the hours of the Divine Office," hearing confessions, ought to be considered present in the choir, in order to obtain distributions in this case."

II. "Whether and how the same canons, celebrating Mass during the hours of the Divine Office, ought to be considered present in the choir, for the same purpose in this case."

III. "Whether and how canons assisting the Archbishop in pontifical functions and other duties, or celebrating a private Mass, while absent from the choir, receive distributions in this case."

IV. "Whether and how the same canons, assisting the Archbishop in conducting business, or accompanying him outside the diocese, receive distributions in this case."

[*Latin ed. p. 73*]

I. Whether and how distributions are made to Canons absent from the choir, in order to cover the expenses of the Chapter Mass, in such a case.

II. Whether and how distributions are made to Canons absent from the choir, who are engaged in the ministry of preaching, in such a case.

III. Whether and how Canons receive distributions, while absent from

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the choir for the examination of ordinands or confessors, in such a case.

IV. Whether and how Canons who are performing the duties of Rector, Administrator, Professors, and Examiners in the Seminary, and are absent from the choir, receive distributions, in such a case.

V. Whether and how distributions are made to Canons absent from the choir, who are serving as Pro-Vicar General, Chancellor, and Secretary, and performing other duties in the Archdiocesan Curia, in such a case.

VI. Whether and how distributions are made to Canons absent from the choir, who are dedicated to the administration of Chapter affairs or the Archdiocesan Table, in such a case.

VII. Whether and how the Canon Chancellor of the Chapter receives distributions, for Chapter affairs handled in the archives, in such a case.

And to the extent that the answer is negative:

VIII. Whether permission must be sought from the Most Holy Father for the absolution and remission of distributions received, in such a case.

SOLUTIONS TO THE DOUBTS. – The Sacred Congregation of the Council, after mature discussion on December 20, 1862, judged it fitting to respond as follows:

I. Negatively in all cases, except for the Penitententiary.

II. Negatively, unless with the permission of the Prefect and for the benefit of the people.

III. Affirmatively regarding the first part, as stated in Licet, August 17, 1641; negatively regarding the second part.

IV. Negatively in all cases.

V. Affirmatively for the time determined by the Ordinary.

VI. Negatively in all cases.

VII. Negatively in all cases.

VIII. Negatively in all cases.

IX. Negatively in all cases.

X. Regarding the Canon Administrator of Chapter Affairs, affirmatively for the days and hours in which he is actually engaged in administration; in all other cases, negatively.

[*Latin ed. p. 74*]

74. DISTRIBUTIONES. Ad XI. Negativum, nisi in casu urgentiae. Ad XII. Affirmativum, si Missa unica cum cantu celebratur, cum universo Capitulo praesente. In causa Lycen, die 17 Augusti 1641, quam Sacra Congregatio indicavit resolutione indubii tertii, haec habentur: cum quaesitum fuisset a Sacra Congregatio "An Decretum Concilii, cap. 12, sess. 24, de reform, vers. 'Omnes', loco habeat quando Episcopus in aliis ecclesiis sibi subicitis, et in civitate existentibus, pontificaliter ter celebrat, vel paratus adsistit cum pluviali et mitra aut cum cappa divinis Officiis, et Missae solemnia vel alia

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pontificalia exercet... si numerus sufficiens Canonicorum et Ministrorum in ecclesia cathedrali re manet?" Sacra Congregatio respondit: "Habere locum." Ex IIS OMNIBUS INTER ALIA PLURA COLLIGES. I. Distingui apprime inter se debere, in materia de qua agitur, fructus beneficii choralis, et distributiones cotidianae. II. Huiusmodi distributiones regulariter (1) consistere in tertia parte omnium fructuum beneficii choralis, quae iis distribuenda sunt qui choro intersunt. III. Dari posse plures causas ob quas qui a choro abest fructus faciat suos, neque in poenas contra absentes sancitas a Concilio Tridentino incurrat. IV. Tamen non omnes causas, quae ab his poenis incurrendis excusant, facultatem tribuere distributiones percipiendi. V. Causas generatim quae hanc facultatem tribuunt, esse infirmitatem seu iustam et rationabilem corporalem necessitatem, aut evidentem ecclesiae choralis utilitatem. VI. Solam autem consuetudinem abessendi a choro et distributiones percipiendi, quamvis episcopali decreto confirmatam, non esse generatim legitimum titulum ad hanc perceptionem cohonestandam. (1) Dixi regulariter, quia plura habentur beneficia choralia in quibus distributiones excedunt tertiam fructuum partem vel etiam omnes fructus in solis distributionibus consistunt. Quod si distributiones tertiam partem fructuum non attingerent, haec divisio inter abusus esset recensenda, nisi eam lex fundationis excusaret.

[*Latin ed. p. 75*]

IMPEDIMENTS TO MARRIAGE. June 17, 1863. Session 24, chapter 1, concerning the Reform of Matrimony. Summary of the case. Titius had promised his fiancée, Caia, that he would marry her in the third degree, under the condition that she remained chaste; so that, if this condition were fulfilled, Titius would undertake to obtain from the Holy See a dispensation regarding the impediment of consanguinity. However, it happened that Titius, having changed his mind, began to discuss marriage with another young woman. Caia, having suffered from this behavior of Titius, brought an impediment to the marriage against Titius's freedom to marry, and also accused Titius of being the cause of her pregnancy. Titius protested, and insisted that this impediment be removed. Therefore, after a process was completed in the court, and the Bishop refrained from delivering his judgment, Titius appealed to the Sacred Congregation. The Sacred Congregation, however, requested the Bishop to provide information and his opinion, and to report on the state of the case and what prevented a definitive judgment from being issued by the court. The court, having transmitted the documents that satisfied this mandate, wrote again to the Sacred Congregation, requesting that a deadline be set for Titius to present his rights before the Sacred Congregation, and to inform them of the outcome, along with the records of the proceedings. The court set a deadline of one month, and the same court transmitted, along with the records of the examination of witnesses, certain extrajudicial depositions of other witnesses, carefully

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collected by Caia herself before a public Notary, under oath. Furthermore, from the judicial records, we learned the following. Titius, under oath in court, stated that Caia had not fulfilled the condition he had imposed upon her, and that she had been indiscriminately conversing with all men, and indeed, with very suspicious men, and that she had spent days and nights in suspicious houses. For this reason, "I," (these are the words of Titius), "when I spoke to her in Le Conquet, she replied to me in this way: you do what you please, and I will do what I please." In addition to this, Titius attributed the woman's pregnancy to his actions with her and with others. Furthermore, the witnesses sworn in by Titius testified that there had been a custom of affection between Titius and Caia, but nothing more.

[*Latin ed. p. 76*]

76. OBSTACLES TO THE MARRIAGE. Certain matters were brought forth concerning alleged betrothals or dealings [had] with another; regarding which the witnesses declared their complete ignorance. Indeed, some of the testimonies of these witnesses, while praising the honesty of Titius, revealed a highly suspicious account of the life of Caia. Furthermore, there were witnesses who testified that they had heard from Caia herself that she was seeking another man, so that she might sooner enter into marriage with Titius. The judicial witnesses, examined by Caia herself, testified almost the same things as the witnesses for Titius, namely, that love had ceased between them, and that a man had visited the woman's house, but nothing about any dealings. The extrajudicial witnesses, mentioned above, who were examined before a Notary, unanimously testified that Titius was the cause of the woman's pregnancy. These are the facts as they appear in the records. The question proposed to the Sacred Congregation of the Council was under the following doubt. Synopsis of the arguments.

ARGUMENT IN FAVOR OF THE EXISTENCE OF THE BETROTHAL.

In favor of the woman, it was observed that, by law, the confession of Titius was sufficient to establish the betrothal. Furthermore, Caia's alleged repudiation was not undeservedly argued to arise from the fact of her defloration, which Caia had suffered.

* *Co scius de Spons. vot. 7 §.

* *Rota in Toletan. Matrim, before Seraphino, no. 9.

* *S. C. C. in Ugentina sponsalium, April 26, 1833.

The condition which the man had imposed upon the betrothal, namely, that he would take Caia as his wife provided that she remained chaste, appeared to be fulfilled. For seven witnesses, although extrajudicial, declared that Caia had never given any occasion for the common people to speak of her having dealings with other men. Furthermore, it was said that the woman's consanguinity could not be an obstacle; since the impediment

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is one for which the Holy Fathers, with just cause, often grant dispensations; especially since Titius had promised Caia that he would obtain this dispensation from the Holy See. Therefore, according to the opinion of many theologians and canonists, it was observed that Titius was at least conditionally obligated, and that he was bound to fulfill the condition itself through the means of a dispensation.

* *Engel in ius Canon. lib. 4 tit. 9 num. 6

* *Pirrhing, ibid. n. 27.

* *Reiffenst. ibid. n. 28.

[*Latin ed. p. 77*]

"OBSTACLES TO MARRIAGE" 77. ARGUMENTS FOR THE NULLITY OF THE ENGAGEMENT. Furthermore, the gravity of the reasons favoring Titus was also to be considered. For a marriage contract is a bilateral agreement, and therefore, it is not sufficient for its validity that the promise originates from only one party, but rather, one promise must be followed by the reciprocal promise of the other. The Holy Congregation of the Council, in the case of Melevita, on April 18, 1863, and elsewhere, has ruled on this matter. It would not be sufficient to bring about a marriage if one party promises, and the other accepts the promise. For it can happen that someone accepts the obligation of another, and yet wishes to remain free. As Canonists and Theologians say, such an acceptance does not take the place of a reciprocal promise, unless the woman, by accepting the man's promise concerning the use of her body, has thereby made herself available to him. However, such extreme circumstances did not seem to be present in the present case, for although there was no doubt about Titus's promise, it appeared rather to be a wish and a desire of the mind, than a true promise with the intention of obligating himself. For there was nothing to indicate that he had any intention of entering into these marriages, or of obtaining a dispensation. Indeed, even if he had promised with good intentions, since there was no evidence of the woman's reciprocal promise, that which is required to constitute a marriage contract was lacking. Nor did the rape or incest that the woman had suffered seem to constitute a substitute for this reciprocal promise. For, besides the fact that the author of the rape remained uncertain based on the testimony of witnesses, there was always a doubt as to whether, for the sake of satisfying his lust, Caius had consented to such a transgression; especially since, based on the testimonies of the witnesses, one could reasonably suspect that she was not entirely innocent. Furthermore, it must be added, and this is particularly important in this case, the bond of consanguinity. Although Doctors, when dealing with engagements entered into with relatives, hold differing opinions, provided that the Supreme Pontiff grants a dispensation, with the Abbot in Cap. on that subject, app. no. 8, subscribing to the opinion of nullity; while Sánchez de Matrim, lib. 5, M. 12, and Justi de dispensat, lib. 2, cap. i, n. 78, ad § 8,

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maintain the opinion of validity, provided that the impediment is of a kind for which a dispensation is usually granted; in practice, however, the first opinion, rather than the second, seems to have been more widely accepted, even in cases of impediments.

[*Latin ed. p. 78*]

78. OBSTACLES TO MARRIAGE. These are matters concerning which the Pontiff is accustomed to grant dispensations. The authors observe that this type of condition is different from that established by the Church regarding impediments, and that the general rule, which teaches that the effect of a condition is to be traced back to the time when something was done, cannot be applied; for this rule is valid only when it is not a question of a condition that affects the suitability of the contracting parties. Therefore, it follows that in such cases, after the letters of dispensation have been ordered for execution, a new consent must be given to validate the marriage, as stated by Cardinal De Luca. *Discip.* 7 *de Matrim.* Berardi *in ius eccles, univ.*, vol. 2, dissertation 2, question 3. For this reason, in a case not dissimilar to this one, the Sacred Congregation responded with a decree declaring the marriage null and void, in January, concerning marriages celebrated in Melevitana on February 12, 1733, and in Viterbo on September 13, 1862.

DUBIUM: "Whether and how an impediment to marriage should be maintained or removed in a case."

RESOLUTION OF THE DOUBT. The Sacred Congregation of the Council, on June 27, 1863, decided that the impediment to marriage should be removed, responding: "Negatively to the first part, affirmatively to the second."

FROM THE ACCURATE DOCTRINE EXPOSED REGARDING THE NULLITY OF MARRIAGES, ONE CAN BRIEFLY SUMMARIZE:

I. A marriage is not considered valid if only one party promises, while the other does not reciprocate.

II. Indeed, a marriage is not considered valid if only one party promises, while the other only accepts the promise, without positively reciprocating. For such a serious obligation of marriage is not easily presumed.

III. However, there may be a case in which acceptance is equivalent to a reciprocal promise, such as when a woman, through her own fault, is led to such dishonor that, after accepting the promise, she suffers defilement.

IV. In the present case, apart from the fact that there was no explicit or equivalent reciprocal promise, there was also the impediment of consanguinity, by which impediment marriages are not valid (1).

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(1) See the following reason and appendix IV.

[*Latin ed. p. 79*]

On February 22, 1862. Session 24 concerning the Reform of Matrimony, chapter I. Summary of the case. Sempronius and Agnes, although they were joined in the second degree of consanguinity, had given each other the promise of marriage and had requested a dispensation from the impediment through a suppliant petition to the Holy See. When the Episcopal Curia received letters on this matter from the same Holy See, the Pontifical decision contained therein was made known to the Parish Priest, so that he might make it known to them; namely, that "His Holiness had adhered to their prayers," but in such a way that "the aforementioned Orators should remain separated for one month before the dispatch of the Bull, and should make two visits to sacramental confession." After the spouses had been made aware of the will of the Holy See, the separation was actually carried out the following day. However, after a few days, Sempronius seemed to have changed his mind, and later he retracted it so completely that he appeared to have forgotten all about his former love, his promise of marriage, and the prepared dispensation, and was now pursuing new affections with another woman. While he was trying to arrange a marriage with this other woman, after the preliminary publication in the parish church, Agnes immediately opposed this at the Curia, raising the impediment of the marriage. But Sempronius, acting to remove this impediment, the Curia considered: "that according to the sounder opinion of the Doctors, and especially of Cardinal De Luca, Disp. 7 De Matr. n. 4, marriages contracted between those impeded by reason of consanguinity or affinity, even if under the condition that the Pope may grant a dispensation, are absolutely invalid, so that they cannot be made valid absolutely, nor after the granting of the dispensation, unless a new consent intervenes; and that in this case, the dispensation has not been obtained, and therefore, there is no renewed consent." Therefore, it presented the following opinion: that there was no impediment in this case preventing the aforementioned marriage, and therefore, having removed the impediment, the aforementioned (Sempronius) was free in all respects to contract marriage with anyone. Agnes, appealing this decision to the Holy See, and after the acts of the process and other observations were transmitted by the Curia, the following question was proposed to the Sacred Congregation of the Council:

[*Latin ed. p. 80*]

MARRIAGES. A concise discussion. DEFENSE OF THE WOMAN. After the defense, undertaken ex officio for Agnes, it was observed that certain acts, though null in themselves, acquire validity if performed under the condition that the Prince grants a dispensation. Thus, it is considered that the institution of a marriage, under the condition that the Prince grants a

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dispensation, is valid. Sánchez, book 5, dispute 5, number 12. Two parties, arising from a benefit, can reconcile themselves regarding the payment of a pension, under the condition that the Pope grants a dispensation. Reiffenstuel I. Decret, title 5, on conditions, number 25. However, it was said that the same right could obtain in a case where the condition concerned a dispensation regarding an impediment to ecclesiastical law, which is not impossible. Therefore, since the condition had not yet been fulfilled, Sempronius could not withdraw from the aforementioned betrothal. Furthermore, it was argued that, among the doctors, there is a dispute regarding whether a new consent is necessarily required after the dispensation is obtained. However, Sempronius was considered to have already given that consent, and, at the command of the Pontiff, who approved of the prayers, he began to obey without any coercion. Therefore, on his part, the required renewal of consent, or the ratification of the given promise, was present. DEFENSE OF THE MAN. The man, on the contrary, argued from the beginning that it did not follow from the acts that a condition had been established, namely, that the Pope would grant a dispensation. Such a condition was found only in the petitions presented to the Holy See, and it was said that the father of Agnes himself had moved in favor of his daughter. However, more strongly, the man alleged that the judgment of the Curia was based on his arguments, to which more were added ex officio. Given the aforementioned diversity of opinions among the authors on this question, it was shown that the opinion of the Holy Congregation was that marriages contracted between those who are related under the condition that a dispensation is granted, are invalid, as in Burgnaten. Sponsalium, January 26, 1709, book 59, Decret, page 17; especially in January Sponsalium, December 12, 1733, in which, although it was a matter of betrothals begun between those related to the fourth degree of consanguinity, and those betrothals had been confirmed with an oath, with the intention and hope of obtaining a dispensation from the Holy See; nevertheless, the Holy See judged that the betrothals were not valid. And it was said that the resolutions of the same Holy See were to be understood in the same sense.

[*Latin ed. p. 81*]

RESOLUTIONS. 81 In Sypontina, Resolution concerning marriages, May 2, 1857. In Beneventana, concerning sports, November 27, 1858. Also, in the decisions of the Holy Roman Rota, number 603, part 5, recent; and the confirmatory decision, number 107, part 8, recent. And concerning the present case, it was reported in the aforementioned January session that a judgment had been rendered declaring the marriage null, even though the woman had alleged that the man, not ignorant of the grace of the dispensation, or of the signed apostolic letter of July 15, had confirmed the marriage on the 20th of the same month. It was deemed sufficient for the man to respond to this grave exception by merely presenting the apostolic letters,

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mandating the granting of the dispensation, and thus the impediment persisted, until the executor of the apostolic letters should remove it. DOUBT. "Whether the judgment of the Court should be confirmed or infirm in this case." The Congregation of Rites, after discussion on February 22, 1862, confirmed the judgment of the Court, responding affirmatively to the first part, and negatively to the second. RESOLUTION. – From the decrees of OMNIBUS ERUDITUS:

I. Marriages contracted between those who are within the degrees of prohibited consanguinity, even if contracted under a condition that the Pope will grant a dispensation, are not valid (1).

II. And these are not valid even if they are ratified by the contracting parties after the Pope has granted the dispensation, indeed, even after apostolic letters have been signed, by which a delegate is entrusted with granting the dispensation.

III. Therefore, in order that they be valid, it is necessary that they be confirmed by the contracting parties after the effective dispensation has been obtained, by which the canonical impediment has actually been removed.

(i) See Appendix IV. Acts, volume 1, page 17.

[*Latin ed. p. 82*]

82. PRIVATE ORATORIES. February 27, 1864. Session 22. Decree concerning the observance in sacred Masses. Summary of the case. For the outstanding merits towards the Apostolic See, Pope Clement XIII granted to the noble spouses A. and B. an extraordinary privilege concerning a private oratory. In the grant of this concession, among other things, it was stipulated: "Therefore, desiring to favor and grant special graces to the aforementioned A. and B... we, with our own and certain knowledge, and by the fullness of the Apostolic power, grant to the aforementioned spouses A. and B., and to their children and descendants forever, that they may freely and lawfully celebrate the Holy Sacrifice of the Mass in their private oratories, both for themselves and for their family, and for any others who may happen to be present there, and that each of them may be able to do so... we grant and concede." The pious woman Caia, after the death of her husband, who was a descendant of the aforementioned spouses A. and B., and with her only son suffering from a severe mental infirmity, incapable of performing the duties of divine worship, began to doubt the extension of this privilege, namely, whether she, as the wife of a husband certainly granted this privilege, and as the guardian of a son granted this privilege, could legitimately enjoy this privilege. To remove any doubt, she petitioned the Sacred Congregation. She requested an authentic solution to the doubt, and if she received a contrary answer, she implored the grace of the Holy See, which she could not claim by right of the privilege. Therefore, the following doubts were proposed to the Sacred Congregation.

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Synopsis of the discussion.

WHAT SEEMED TO BE THE ARGUMENTS AGAINST THE WOMAN REGARDING THE FIRST DOUBT. — It was noted that, according to the office, there was reason to oppose a positive answer to the first doubt, as the Sacred Congregation had ruled in Marsica on December 3, 1740, in a case where a Bishop of Marsica, having observed the celebration of Mass in a private oratory before the family, in the absence of the husband and wife who were the principal beneficiaries of the privilege, and after a prior suspension of the use of that oratory, forbade the celebration of Mass there in the absence of the husband. The husband, as the holder of the indult, then...

[*Latin ed. p. 83*]

PRIVATE ORATORIES. 83. He declared before the Sacred Congregation, adhering to the words of his indult, "that it is permissible and lawful, and that everyone may, in the presence of relatives by blood... and of the family, freely and lawfully celebrate [Mass]..." and he maintained that his presence was not required, although the words of the indult were primarily directed towards him. And the following doubts were proposed: I. "Whether in the private oratory in question, the Sacrifice of the Mass can be celebrated in the absence of the Lord and in the presence of only the family?" II. "Whether the sentence of suspension of the oratory, issued by the Bishop in this case, is to be maintained?" The response was given: to I, negatively; to II, affirmatively, and in accordance with (1). However, Pope Benedict XIV did not merely approve the resolution of the first doubt, but also made it public through the Eminent Prefect of the Sacred Congregation, so that it would be known to all, "that [it] is not possible" (these are the words of the declaration) "by virtue of a similar indult to celebrate Mass in private oratories, when for the celebration of that Mass, none of those for whom the indult was principally granted is present; so that without the presence of anyone of the aforementioned persons, it is not permissible to perform the Sacrifice of the Mass, even if another is present, whether he be of the sons, or of the relatives by blood, or of the relatives by affinity, or of the family, or even of noble guests, as mentioned in the aforementioned Brief; because to these, nothing else is granted by such a Brief, than that each of them, attending the Mass which is celebrated in the private oratory in the presence of another of the persons expressly named in the Brief, may satisfy the obligation of hearing Mass on holy days by order." Therefore, having abolished and rejected any less prudent interpretation of such Briefs and Indults that had been made up to that point, (2) His Holiness declared and ordered that it be observed. This declaration is also reported by Gattic. de Orat. Dornest, c. 21. From this, it was concluded: that a woman cannot use the oratory.

(1) The Sacred Congregation uses this phrase, "and in accordance with,"

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when, in addition to the solution of the doubt, it considers something else to be noted, declared, or ordered, etc.; and since it further reveals its mind, it is said to be "in accordance with," which is sometimes secret, as in the present case, "so that it is only made manifest to those to whom this expression of mind is directed; sometimes, however, it is not secret, and is added to the solution of the doubt itself."

(2) At that time, there were many Doctors who believed that the presence of the privileged person was not required for the others to enjoy the privilege mentioned in the Brief. See Gattic. De orat. Dornest, cap. 21, and Pignatelli, tom. 6, cons. 98, n. 99.

[*Latin ed. p. 84*]

£4. PRIVATE ORATORIES. By a certain privilege, they were not included among those principally favored by the Indult. WOMEN WERE FAVORED. — On the other hand, the favor of the Lady of Caius supported this extraordinary privilege, granted in recognition of distinguished merits, by a papal decree and with certain knowledge from His Holiness Pope Clement XIII. Indeed, Pope Benedict XIV, in his encyclical letter of the year 1751, which begins with "Magno," seemed to have somewhat excepted such privileges. And in truth, in this encyclical, §§ 16 and 17 are found, which state that if, besides those listed in the front of the Indult, another named person is indicated in the body of the Indult, and it is permitted for that person to celebrate Mass, this is sufficient to ensure that the Mass is celebrated properly with that person present. Furthermore, the favor of the same woman led to the interpretation of the words of the aforementioned extraordinary Indult, namely "quilibet eorum possit et valeat" (that any of them may and be able), as granting to each of those mentioned in the Indult the faculty of celebrating and of assisting at the sacrifice, without necessarily requiring the presence of the principally favored person. Doubts. I. "Does it legally pertain to enjoy the privilege of a private oratory in this case?" "And to what extent?" II. "Is it permissible to grant the request of the Lady of Caius in this case?" RESOLUTION OF DOUBTS. — The Sacred Congregation of the Council, in its meeting of February 27, 1816, decided to respond to I affirmatively; to II, with the provision stated in the first. FROM ALL THAT IS TO BE AVOIDED: 1. The intention of the Holy See in granting ordinary Indults for private oratories is that, through the words "in your home and in your family, etc.," the privilege is extended indirectly only to the family, etc.; so that, only with the presence of the principal favored person, can others mentioned in the Indult enjoy the private oratory (1). (1) "As for servants, since they are not, at the time in question, actually necessary, they are referred to the master only insofar as they are present at such a Mass, by reason of service; hence, it is also customary to exempt them from the obligation of attending Mass in the church on holy days of precept in such ordinary Indults." "We wish that family members and

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servants be considered free from service."

[*Latin ed. p. 85*]

PRIVATE ORATORIES. 85. Where the presence [of the owner] is lacking, any indirect extension of a privilege ceases entirely. II. This is one of those cases in which the rule of law cited in *15 in 6* cannot be invoked—namely, that restrictions should be narrowed and favors broadened—but rather, another rule of law, found in *28 in 6*, should prevail: one that, exceeding common law, cannot be extended to its consequences. III. However, certain extraordinary indulgences, such as the present one, exist, in which the intention of the granting Pontiff is broader; and therefore, according to this intention, they may receive a broader interpretation in cases of reasonable doubt.

LAWS REGARDING FUNERALS AND THE RESTITUTION OF EXPENSES. On November 26, 1864, Session 25, chapter 13, concerning reforms. Summary of the case. A law promulgated by a certain civil government, which, with the exception of Bishops, required all to be buried in public cemeteries, having removed the choice of burial, gave rise to the present question. Since Titus, who possessed a family tomb in the church of the Regular Order A, foresaw his own death (1) and made no provision for his funeral, his parents entrusted the funeral arrangements to the parish priest of that parish, who, while beginning to fulfill the mandate imposed upon him, was informed, both verbally and in writing, by the aforementioned Regulars that the right to the funeral, by reason of the family tomb, belonged to their church, and not to the parish church; and therefore, all the expenses of the funeral were due to their church, except for a fourth part granted to the parish priest himself. Nevertheless, after the funeral was completed in the parish church, the matter was then brought before the Sacred Congregation of the Council under the following question. (I) Those who inflict death upon themselves are to be deprived of ecclesiastical burial, canon *Placuit 12, causa 23, q. 5*, unless it is established that they acted in a state of frenzy, or that they did so through insanity, canon *in that cause, 15, q. 2*. However, the merciful Mother Church easily presumes such insanity.

[*Latin ed. p. 86*]

86. ON THE RIGHTS AND BENEFITS OF FUNERALS. A SYNOPTIC DISCUSSION.

DEFENSE OF THE PAROCHIAL PRIEST. — The parish priest argued that all the benefits derived from funerals were due to him, since, by reason of civil law, the burial of the deceased could no longer take place in the family burial ground; therefore, the Regular clergy could no longer invoke the right of sepulcher by ancient custom, and with that right removed, the

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ordinary right of the parish priest prevailed. Furthermore, he maintained that he was not bound by any special obligation, such as a convention or agreement, with the Regular clergy, nor had the deceased's parents in any way obligated him to provide for the funeral, since they had freely and spontaneously chosen to have the funeral rites performed in the parish church.

DEFENSE OF THE REGULAR CANON. — Conversely, the Regular clergy argued that they were not deprived of the right to funerals by the introduction of a public cemetery. For, if civil law brings about any change, it is only a material change in the place where the body must be buried for reasons of public health; there is no change whatsoever with regard to the rights, which, if they cannot be exercised with regard to burial in their own church, are not therefore to be considered null and void with regard to all matters pertaining to the deceased. These rights of the Regular clergy were fully confirmed by several Resolutions of the Sacred Congregation, in similar cases which were presented, and in which it was clearly demonstrated that the Sacred Congregation had never considered the rights of funerals to be violated by the recently established public cemeteries; nor could parents or heirs determine, contrary to the established laws, the church in which the funeral rites must be performed for the deceased.

DOUBT: "Whether the parish priest is obligated to restore to the Regular clergy... the benefits..." in such a case.

SOLUTION OF THE DOUBT. — The Sacred Congregation decided on November 26, 1864, to respond in favor of the Regular clergy. Affirmative in all respects, with the addition of: "and furthermore" (1).

(1) "And furthermore" signifies, with the Sacred Congregation, that such a meaning is intended, and that the reason for this is not presented. This clause is usually added when all the Cardinals are in agreement in the decision of the case. The effects produced by this clause are described in the "Order to be observed in cases presented to the Sacred Congregation," commonly known as the "Regulation," article 22, which is translated into Latin as follows: "If the Resolution of the Sacred Congregation is accompanied by the clause 'and furthermore,' a new petition must be submitted (if one is requested) to the Most Eminent Prefect (in other cases, a petition is requested)."

[*Latin ed. p. 87*]

CONCERNING THE RIGHTS OF FUNERALS AND BURIAL. BENEFITS. FROM WHICH THE FOLLOWING POINTS ARE EASILY UNDERSTOOD.

I. Regarding recently established public cemeteries, for the sake of public health, the rights pertaining to a private burial plot are not taken away; but

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only the material deposition of the body in the private or family burial plot is restricted.

II. Therefore, all other matters which are usually associated with the ownership of a burial plot, such as the funeral procession to the burial church, the exposition of the body in that church, prayers and other funeral rites, remain entirely intact.

III. Hence, the other legal provisions established, especially in the titles concerning Burial, remain in force: therefore, it remains within the power of the faithful to determine the church for their funeral.

IV. If this determination has not been made, the funeral must be carried out according to the law, namely in the church of the private burial plot, if one exists; otherwise, in the church of the parish to which the deceased belonged; therefore, neither parents nor heirs can determine otherwise, unless specifically permitted.

V. Therefore, if the deceased's parents or heirs determine and carry out the funeral otherwise, the church which performed the funeral is obligated to return the expenses to those to whom they legally and according to local custom belonged, namely, as is usually the case, to the church of the private burial plot, after deducting a fourth part for the benefit of the parish priest, or the entire amount to the parish church if there is no private burial plot (1).

(Note from the Secretary): If the Secretary believes that he himself cannot conduct this experiment, he may refer the petitioner's request, along with a memorandum citing the relevant passages, to the full Congregation. In both cases, if a favorable response is obtained, the matter cannot be represented for consideration before three months, following the order of the original proposal; and if the requesting party fails, they are obligated to cover the expenses of this extraordinary experiment. The reimbursement of expenses, according to the aforementioned Order, Article 24, applies only in cases of Marriage, Alimony, Assault, and Spoliation.

(1) See Appendix V.

[*Latin ed. p. 88*]

88. DISPENSATION REGARDING AN IRREGULARITY. November 26, 1864. Summary of petitions. The Reverend Canon A., already advanced in years, had been struck by a stroke affecting the left side of his body. After a long period, the paralysis in his leg had almost subsided, but his left hand remained so numb that, according to the physician's opinion, there was scarcely any hope of it regaining sensation. Consequently, being prohibited from celebrating the Holy Mass, he humbly petitioned that, through the benevolence of the Apostolic See, a dispensation from the irregularity might be granted to him, with due precautions, to once again offer the Sacrifice of the Mass. The petitions, as usual, were transmitted to

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the Bishop, who had already recommended them, with the request that, after an examination of the petitioner before the Master of Ceremonies, a detailed report be made regarding the condition of the affected arm; and this was fully satisfied by the response: "The examination was carried out before the Most Reverend Master of Ceremonies, and it has been reported to us that the petitioner, endowed with all his intellectual faculties, is able to recite the Missal with all its parts, and to pronounce the words of the Mass freely and distinctly, so that he may properly perform the Holy Sacrifice. However, there are two things that the same Master of Ceremonies states that the petitioner cannot do. Firstly, he cannot break the sacred Host with his right hand over the chalice. Secondly, he cannot, with the same right hand, wipe the paten over the chalice, cleaning it of fragments. Therefore, he believes that grace should be implored for these two things: that the Host may be broken over the paten with the hand alone, and that the paten may be wiped with the help of another priest, who will hold the paten over the chalice while the petitioner is celebrating." And he concluded his letter: "Since the petitioner has not been deformed by the paralysis, and his gait is almost natural, and if the use of his left hand is taken into account, he fulfills almost all the duties of a priest, and furthermore, since several priests, both young and old, have died in the territory of Mount C. in a short period of time, and since the spiritual needs of the faithful require that the celebration of the Mass not cease, without mentioning his advanced age, his true poverty, his long and continuous..."

[*Latin ed. p. 89*]

DISPENSATION REGARDING AN IRREGULARITY. 89. Having rendered service to the Church of Monte C., it is fitting that he receive the grace which he implores. Various examples, not dissimilar from the present case, were presented to the Sacred Congregation. The Fathers of the Sacred Congregation responded with a favorable decree.

RESPONSE. – The Sacred Congregation of the Council, on November 26, 1864, considered it appropriate to respond to this petition with the following summary: Provided that there is a need of the people, and that the [sacrament] is celebrated with the assistance of another priest or deacon, the granting of a dispensation and the remission of the impediment are left to the judgment and prudence of the Bishop, after consultation with the Most Holy [Father].

DISPENSATION REGARDING AN IRREGULARITY. January 23, 1864. Regarding the petition. A young man named Caius, eighteen years of age, and studying ecclesiastical disciplines in a seminary, having suffered a burn on his right hand from his earliest years, so that his thumb and index finger were injured, presented a humble petition to the Holy Father, that he might grant him a dispensation concerning this irregularity. The petition was forwarded to his bishop, who was also requested to issue a statement

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and report whether, after an examination before the Most Reverend Master of Ceremonies, the aforementioned defect was so grave as to constitute an impediment to the Sacraments, or whether it would arouse astonishment and the danger of irreverence in the people; and also to provide information regarding the age, morals, and knowledge of the petitioner, the needs of the Church, and the utility of the dispensation, and finally, whether the petitioner had suffered the burn on his hand as a result of a culpable act.

(1) When the granting of a dispensation for a case concerning which the law provides a judgment regarding which the Sacred Congregation does not have the power to dispense, the Sacred Congregation adds the clause "provided that he consult with the Most Holy [Father]." By this formula, the Secretary is instructed to refer the decree of the Sacred Congregation to the Holy Father, who ordinarily approves the judgment of the Sacred Congregation.

[*Latin ed. p. 90*]

DISPENSATIONS REGARDING IRREGULARITIES. To all these inquiries, the Prelate responded in the following manner: "Having heard, before the Reverend Master of the Ceremonies of this Diocese, a scrupulous examination concerning the deficiency of the thumb and index finger of the right hand of this petitioner, resulting from a burn: I have found nothing whatsoever that presents an impediment to the performance of the sacred rites, nor does it exhibit any danger of irreverence or of causing astonishment among the people, except perhaps in the act of administering the sacred Mysteries."

"The petitioner, who has suffered this defect without any fault worthy of reproach, has reached the age of 18; he possesses integrity of morals and a great dedication to studies, and therefore it is to be considered that the Church itself needs his services, and that a dispensation can be granted regarding this impediment, provided that he is permitted to administer the sacred Eucharist with his left hand."

Furthermore, the petitioner provided a more detailed description of the defect in these words: "The deficiency of the thumb and index finger consists in the fact that not only are the fingers themselves burned and their tendons contracted, but also that approximately half of the terminal or upper phalanges are missing. However, since the nails have grown, the fingers can be easily moved and joined; and nothing prevents them from holding or breaking the host between them."

It was observed that the greatest difficulty, for which the requested dispensation seemed to be denied by the practice of the Holy Congregation, lay in the fact that the matter concerned not a promotion to the Holy Orders, but a promotion within them; in which case, the decrees of the Holy Congregation are less favorable in such cases. However, several decrees of the Holy Congregation were presented, pertaining to the matter, in which,

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considering the benefit of the Church, dispensations had been granted in other cases.

RESPONSE. – The Sacred Congregation, on January 23, 1864, after considering the above-mentioned matters, decided to respond as follows: "As has been explained, it does not seem appropriate [to grant the dispensation]."

FROM TWO PRESENTED EXAMPLES OF DECREES REGARDING IRREGULARITIES: I. It is the practice of the Holy Congregation, in cases in which a dispensation from an irregularity is requested, to require, in addition to a detailed description of the defects by which the bodily irregularity is caused...

[*Latin ed. p. 91*]

DISPENSATION REGARDING IRREGULARITIES. 9. It is also customary to require an examination of the candidate before the ceremonies, to be conducted by order of the Ordinary before the Most Reverend Master of Ceremonies. II. In conducting such an examination, attention must be paid to the ceremonies which the irregular candidate is not properly able to perform, and especially to the public admiration and scandal that might be aroused, or to the danger in performing the sacred rites. III. After such an examination has been made, the Holy Congregation requires further assurance of the true necessity or benefit to the Church. IV. If such necessity or benefit to the Church exists, and if there is nothing too grave that would obstruct, the Holy Congregation usually grants dispensations to those who have already been promoted to the sacred orders; but the granting of dispensations is more difficult in the case of those who are to be promoted to the sacred orders.

SACRED CONGREGATION OF BISHOPS AND THE CONGREGATION OF THE MOST HOLY REDEEMER REGARDING PRIVILEGES. On September 16, 1864. Summary of the case. Since in a certain recent learned treatise on the Congregations of Clerics Regular, it was questioned whether such Congregations are entirely exempt from Episcopal jurisdiction, and since the Institute of Clerics of the Most Holy Redeemer, who emit simple vows, was mentioned in that treatise as if it were a regular institute with privileges, especially the privilege of exemption from Episcopal jurisdiction, the Superiors of the aforementioned Congregation requested the Holy See to declare specifically that the Congregation of the Most Holy Redeemer is entirely exempt from Episcopal jurisdiction, except in cases legally excepted.

[*Latin ed. p. 92*]

92 CONGREGATIONIS SS. REDEMPT. SUPER, PRIVILEGIIS. Quare, audito Consultoris voto, circa hanc quaestionem? S. Congregationi propositum fuit dubium in calce positum. Disceptatio synoptica. EAQUAE EX-

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EMPTIONIS OBSTARE VIDEBANTUR. — Plura ex officio erudite congerebantur contra eam exemptionem de qua est sermo, quae sic de more perscrutabamur. Variis indicatis vocis exemptionis significationibus, considerabatur exemptio in ordine ad religiosas familias prae locorum Ordinariis; et distinguebatur exemptio quae prodit ex communi iure, nempe ex Sacris Canonibus, Concilio Tridentino, Constitutionibus Romanorum Pontificum, et Declarationibus Sacrorum Congregationum*, ab ea quae vim suam haurit ex speciali Romano Pontificis privilegio. Prima competit Ordinibus qui Regulares in iure appellantur, cuiusmodi sunt illi Ordines in quibus vota solemnia emittuntur. Circa quos Ordines observabatur quoque, eos exemptos censeri ab Episcopali iurisdictione statim ac admittantur ad nuncupanda vota solemnia. Acquirunt enim hoc facto privilegia Regularium, praesertim privilegium quo eximuntur a canonica Episcopi visitatione, correctione et generatim iurisdictione ad normam communis iuris. Altera vero exemptio, quae repetitur ex speciali Romano Pontificis privilegio, ea est quae competit religiosis familiis vota simplicia emittentibus, quae hodiernis diebus non sine speciali divina providentia iugiter multiplicantur. (1) Et circa eiusmodi (i) Singulari providentiae beneficio adscribenda absque dubio videtur ea iugis multiplicatio religiosarum familiarum sive virorum sive mulierum in tantam Christifidelium utilitatem: adeo ut sicut impii huius saeculi viri et mulieres, Satanae spiritu agente, sub variis insigniis et actionibus, colliguntur in unum adversus Dominum et adversus Christum eius; ita Christifideles agente divino Spiritu per religiosas familias collecti, dum propriae virtuti student, contra vires ingruentissima saeculi, sub temperata Episcoporum auctoritate, (qui ex firma adhaesione Petri cathedrae robur Ecclesiae constituunt) collatis viribus evangelicam doctrinam per orbem «erunt, vel florentem colunt, vel lahefactatam instaurant, maxime charitatis operibus. Cum attenderentur eiusmodi recentes religiosae familiae praesentis temporis indigentiis, mirum nemini esse debet si S. Sedes post maturum examen sua auctoritate earum Constitutiones intra quosdam limites approbet, quas forte aliis saeculis difficilius approbavisset; imo ex specialibus circumstantiis interdum prohibuerit uti apparet ex Const. S. Pii V. Pastoralis officii et ex altera Lubricum vitae genus. Quod autem eiusmodi Instituta iugiter multiplicentur, apparet ex variis catalogis quos prae oculis habemus. Sanft ex Elencho praecipuorum Institutorum virorum et mulierum quae vel tantum laudata, vel etiam approbata a S. Sede.

[*Latin ed. p. 93*]

The Congregation of the Most Holy Redeemer, concerning privilege number 93, examined the statutes of religious institutes, their purpose, the constitutions by which they aim to achieve that purpose, and so forth; and after careful examination, it usually approved such institutes, and also confirmed their constitutions with its authority. From this, it was inferred that these institutes were indeed exempt from episcopal

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jurisdiction, but only concerning those matters about which the approved constitutions speak; in all other respects, they were subject to the local ordinaries. To confirm this conclusion, a resolution was cited, issued by the particular Congregation in a certain case concerning Lima, regarding an institute founded by Saint Philip Neri. Among other questions, the following was proposed: "Is the Congregation of the Oratory, in all respects, subject to the Archbishop, in matters of governance, form, and the subjects treated?" The answer was: "Affirmatively, except for that institute, or those matters about which the constitutions speak." This resolution was subsequently confirmed by Benedict XIV on January 21, 1758, in the Constitution *Emanavit*. Similarly, in another case concerning the Fathers of the Oratory at Massmen, the same doctrine was confirmed and approved in the Constitution *Cum sint* on January 30, 1827, by Leo XII. Therefore, it was concluded that the Congregation of the Most Holy Redeemer, apart from the exemption concerning which the constitutions approved by the Holy See speak, could not claim any broader exemption, such as an exemption from the canonical visitation of the Bishop. From the year 1816 up to the kalends of April, 1862, we find that this principle has led to the following results: from 1816 to 1820, there were 5; from 1820 to 1830, 13; from 1830 to 1840, 20; from 1840 to 1850, 23; from 1850 to 1860, 42; and from 1860 to the kalends of April, 1862, 23. In the year 1856 alone, in France, there were 8 religious institutes for women, which, if a very few are excepted, had not yet been praised or approved by the Holy See, but were nevertheless recognized by civil authority through an abuse. Nowadays, the number of institutes of men and women that have been praised or approved by the Holy See amounts to 198, in addition to others that are currently under examination, or are to be brought under examination. Each of these institutes has established, and continues to establish, numerous houses throughout the world, even in the most remote parts of the globe, and if one were to attempt to enumerate all the individual members, it would be a most difficult task. Among other things, this is one example worthy of consideration, of how the Holy Spirit fosters and guides the Church. It is only to be hoped that, in the present tribulation of the Church, a simple breath of the Divine Spirit may scatter the dry ashes, so that the fire hidden beneath the ashes may be inflamed with great force, by the same Spirit.

[*Latin ed. p. 94*]

94. The Congregation of the Most Holy Redeemer, concerning the privileges. It did not seem that the arguments presented in opposition should prevail. It was alleged that Apostolic Letters existed in which the Institute of the Most Holy Redeemer was granted the right to participate in the privileges of other Congregations, which enjoy special exemptions, and in which these very exemptions are named. However, regarding the commu-

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nication of privileges with these Congregations, it was responded, citing Monacell. Form. leg. title 16, form 2, supplement n. 11, that "Privileges – which involve a prejudice" to a third party, either are burdensome to others, or are of special distinction, or are "rarely granted," or finally, "are harmful to the ordinary jurisdiction of the Bishop," are not conferred merely by communication, but require a special and explicit concession, notwithstanding that the communication may have significant clauses, as widely demonstrated by Pignatelli, Constitutions 1, n. 88, and 34, title 10. Also, Petra Const 5, Innocent IV, n. 45, volume 3, Rota Decis. 201, n. 14 and 15, recent part 19, and likewise Monacell. title 13, form 4, supplement n. 33 and following. This doctrine, the same author confirms with appropriate resolutions of the Holy Congregations. Also, Benedict XIV, in Institute 23, n. 4, and in Constitution Impositi nobis etc., dated February 27, 1747. It seemed that it could not be otherwise. For if full communication of privileges were admitted, so that the Congregation of the Most Holy Redeemer communicates privileges to the PP. of the Congregation of the Most Holy Cross and Passion; and these, in turn, communicate privileges to the Society of Jesus, which further communicates privileges to Mendicant Orders and others, then that distinction between regular Institutes and those that are usually secular would be entirely lost, a distinction which the Holy Congregation commands to be carefully guarded. Furthermore, it was added that in the alleged letters presented in opposition, the expression "all privileges and exemptions" is found; but the word "exemption," because it involves a violation of the right of a third party, is subject to the strictest interpretation; and furthermore, it is the practice of the Holy See that, when granting the exemption in question, it does not merely express it incidentally and perfunctorily, but uses solemn and imperative formulas, for example, "We exempt and immediately subject to the Holy See, etc.," with the addition of derogatory formulas, especially those of the Chancery regarding the right in question, not being waived. With these and other considerations observed, it seemed that it could only be concluded that the exemption was...

[*Latin ed. p. 95*]

CONGREGATION OF THE MOST HOLY REDEEMER: Regarding the privileges pertaining to new religious institutes which are newly approved by the Holy See. THOSE WHO WERE FAVORED BY THE CONGREGATION OF THE MOST HOLY REDEEMER. – Favored by the aforementioned institute, the Apostolic Letters were issued in a brief form, namely: the Brief *Sacrosanctum*, by Pius VI, of blessed memory, dated August 21, 1789, and the Brief *Qui Sicut*, by Pius VII, of blessed memory, dated January 9, 1807. Furthermore, the Brief *Sacrosanctum*, in addition to confirming all the privileges which had already been granted to the Congregation of the Most Holy Redeemer, specifically confirmed

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the communication with three Congregations, namely, the Congregation of Christian Doctrine, the Congregation of the Religious Workers, and the Congregation of the Discalced Clerics of the Most Holy Cross and Passion. And it was noted that these Apostolic Letters were issued, not in the usual form, but in a completely extraordinary form, containing the most efficacious clauses. In the same document, the term "Exemptions" is expressly mentioned, and these are granted together with the other privileges granted and to be granted to the aforementioned institute, and indeed not incidentally or perfunctorily, but by our own initiative and with certain knowledge; for there it is written: "privileges, exemptions... even by our own initiative and with certain knowledge, and others granted by Us, or by any of our predecessors, and to be granted in the future in the same manner." Therefore, with these words, all and each privileges (except those which are incompatible) are included, even those which are of a rarer and more difficult concession. Especially since in the same Brief, the following clause is found: "as if they had been expressly and specifically and equally and equally principally granted to them, by the authority and tenor of the present document, we grant:" with these words, the communication acquires the force of a direct concession. Nor are there lacking other efficacious clauses, in which it is expressly derogated from the Constitutions and Apostolic Ordinances, as well as the Statutes and Customs, even those confirmed by oath, by Apostolic confirmation, or by any other firm guarantee, or by any other means, which might hinder the communication of these privileges and exemptions. Therefore, from the tenor of these Letters, it was concluded that the intention of the Supreme Pontiff was firm and resolute to grant to the Congregation of the Most Holy Redeemer all privileges, both prejudicial and non-prejudicial, which had been granted to the Congregation of the Most Holy Redeemer.

[*Latin ed. p. 96*]

96. The Congregation of the Most Holy Redeemer possesses, with respect to the Congregations of Clerics Discalced of the Most Holy Cross, of the Co-Workers of the Poor, and of Christian Doctrine, the same privileges as if they had been expressly and equally granted to the Congregation of the Most Holy Redeemer itself; and therefore, it does not in any way contradict the rule of the Chancery that the right of a third party cannot be infringed. Indeed, according to the teaching of the authorities, when it is a question of a grace derived from a pre-existing natural right, such as, for example, an exemption from tithes, an exemption from jurisdiction, a modification of the will, etc., it is not necessary that there be an express mention in the grant of the infringement of the right of a third party. In the Apostolic Letters *Qui sicut*, it was demonstrated that Pope Pius VII, in his own words, not only confirmed the Apostolic Letters *Sacrosanctum*, mentioned above, concerning which he stated: "We wish that the

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tenor of these Letters be held to be expressly and inserted herein"; but he also expressly declared his will (we decree, we order, and we declare) to grant to the Congregation of the Most Holy Redeemer all and each privileges, indulgences, dispensations, and remissions of sins, faculties, exemptions, and spiritual graces, even those requiring special mention, by which the aforementioned Congregations of the Most Holy Cross and Passion, of Christian Doctrine, and of the Co-Workers of the Poor, and other similar Congregations of Clerics or Regular or Secular Canons, use, enjoy, and benefit, either by Apostolic concession, or by any concession from our Venerable Brothers, the Cardinals of the Holy Roman Church, or otherwise, and that they may use, enjoy, and benefit in the future. And in order to further demonstrate that these privileges and exemptions were granted and confirmed, not only through the widest communication, but through a true and direct concession, and in addition to other clauses and derogations, it was particularly emphasized in the words in which the praised Pope Pius VII expressly decreed: and also, as it may be necessary, to the aforementioned Congregation of the Most Holy Redeemer... all and each of these things as if they were expressly and inserted herein verbatim... we grant anew with the same authority. Furthermore, it was added that such Congregations, which enjoy the privileges of the Institute of the Most Holy Redeemer by special grace of the Holy See, enjoy complete exemption from Episcopal jurisdiction, visitation, and correction; and to demonstrate this especially, the Rescript granted by Blessed Paul of the Cross in the year 1771 was cited, which we refer to in its entirety at the end of this case.

[*Latin ed. p. 97*]

CONGREGATIONIS SS. REDEMPT. SUPER PRIVIL. 97. It was furthermore noted in the record that the Bishops had never visited the Institute of the Most Holy Redeemer, nor, considering the Apostolic Decrees mentioned above, could they have done so, from which (as has been said) it was entirely established that the privilege of exemption granted to said Institute had been indirectly, through the most ample communication, but also directly, as if the privileges of others had been expressed verbatim in these Decrees and granted anew. Considering these and other observations, the following point was discussed: "Whether the exemption from episcopal jurisdiction applies to the Congregation of the Most Holy Redeemer in this case."

SOLUTION OF THE DOUBT. — The Sacred Congregation of Extraordinary and Regular Affairs, on September 16, 1864, decided to respond: "Considering the special privilege granted to the aforementioned Congregation, affirmatively, according to the form and manner of the Rescript issued on September 21st of that year, in favor of the Clerics of the Most Holy Cross and Passion."

The aforementioned Rescript of the Sacred Congregation is read as fol-

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lows: "On September 21, 1771, Our Holy Lord, having heard the report of the undersigned Secretary, for a more thorough explanation of the Constitutions of the Clerics of the Most Holy Cross and Passion of Our Lord Jesus Christ, which were first approved by His Holiness Benedict XIV through his Letters in the form of a Brief dated April 18, 1746, and subsequently also most graciously approved and confirmed by His Holiness through his Apostolic Letters issued on November 16 of the year 1769, and especially §§ VI and XV of the aforementioned Constitutions, declared that, with regard to those houses in which there reside twelve of said Clerics from the same family, and in which regular observance is maintained, both the churches and the houses, and the Regular Clerics residing therein, are exempt and immune from the jurisdiction, visitation, and correction of any Bishops and Ordinaries, in whose respective civil territories and dioceses said houses are located, and that they shall enjoy the same privileges and exemptions, which, through the beneficence of the Apostolic See, have been granted to other Congregations of Regular Canons, except for those matters pertaining to..."

[*Latin ed. p. 98*]

98 CONGREGATION OF THE MOST HOLY REDEMPTOR, CONCERNING PRIVILEGES: "The administration pertains to matters concerning cases in which Bishops and Ordinaries, by delegated right, possess jurisdiction, according to the form of the Holy Canons of the Council of Trent and the Apostolic Constitutions, and thus, His Holiness has commanded that this be observed and fulfilled perpetually."

F. M. CARDINAL DE RUBEIS, Prefect.

F. N. ARCHBISHOP PETBEN, Secretary.

From our COLLEGES:

I. Regular Orders enjoy full exemption from episcopal jurisdiction, according to the norms of law and pontifical Constitutions; whereas, on the contrary, Religious Institutes with simple vows can only claim that exemption which they can demonstrate has been specially granted to them.

II. It is not sufficient to demonstrate this full exemption by alleging a generic communication with the privileges granted to some Order which is thus exempted; but it must also be demonstrated that the Roman Pontiff intended to extend this communication even to this odious privilege of exemption.

III. Among the various Religious Institutes with simple vows, which, by special grace of the Holy See, enjoy all manner of exemption from episcopal jurisdiction, visitation, and correction, except in cases lawfully excepted, the following are specifically enumerated: the Congregation of the Most Holy Fathers of Perpetual Adoration of the Most Holy Sacrament, and the Congregation of the Most Holy Redeemer founded by Saint Alphonsus

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Maria de Liguori (1).

(1) It is not rightly argued against the exemption of which we are speaking, in this manner: Superiors of some Religious Institute do not have the canonical jurisdiction to visit and to inflict censures on their subjects; because (perhaps) they do not have any document in which this jurisdiction is positively said to be granted to their Institute: therefore, the Institute is not exempt from episcopal jurisdiction. The fallacy of this argument consists primarily in the fact that it is assumed that the jurisdiction granted must be proven with the same rigor as the exemption itself; which is false. Indeed, exemption, being a violation of episcopal rights, is considered an odious thing, and therefore must be demonstrated by the clearest arguments. But once this exemption has been demonstrated, the jurisdiction of which we are speaking is not odious. Indeed, to every well-ordered society, suitable means must be provided by which the society is governed. Therefore, by the very fact that some ecclesiastical society is withdrawn from episcopal jurisdiction, it is considered to have been granted that jurisdiction, by which it can be governed, independently of the Bishops. And if, for this...

[*Latin ed. p. 99*]

CONGREGATIONIS S. S. REDEMPT. SUPER PRIVIL. OÍ? IV. Finally, those Institutes which cannot claim for themselves an exemption from episcopal jurisdiction, nevertheless may claim exemptions concerning the Institute itself, and concerning those matters about which the respective Constitutions speak, simply because they have been particularly sanctioned by Apostolic authority. EMPHYTEUSIS ET REDINTEGRATIONIS (Ground Lease and Reintegration) April 28, 1865. Summary of the facts. It was recorded in the books of administration of the episcopal See that, in the year 1797, on April 28, through the acts of Notary N., and also of the episcopal Chancellor, the Bishop of the time, Damiano, had granted a certain plot of land for a ground lease for three generations. It cannot be concluded that such a society is not exempt, but rather it should be legitimately concluded that this society ought to enjoy this power of jurisdiction, namely, the power to inflict censures. Furthermore, there are not lacking in this matter, authentic declarations or concessions concerning particular religious Institutes of which we are speaking. Thus, Benedict XIII, in the Apostolic Brief of June 16, 1727, to the Congregation of Christian Doctrine, in order that this indulgence might be more firmly established, granted: "That the General Prefect of the same Congregation, and each Provincial, with the consent of his advisors, and the Rector with the consent of the Provincial Prefect and his council, may freely and validly proceed with the penalty of suspension against those subordinates who are disobedient, or contumacious, or rebellious, and may absolve those who repent from that penalty, respectively and validly." To the privileges

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of this Congregation, in the manner as stated above, the Congregation of the Most Holy Redeemer is similarly granted; therefore, it seems that this power cannot be denied to this Congregation. Furthermore, concerning jurisdiction in general, and specifically concerning the making of canonical visitations, as far as the Institute of the Most Holy Redeemer is concerned, we mention only this. When Gregory XVI, of blessed memory, divided this Institute into six provinces by Decree of July 2, 1841, at the same time he ordered that the powers of the Provincials should be defined in the next General Chapter; which was then held in Rome in the year 1855. The acts of this chapter were rigorously examined by the Most Eminent and Reverend Fathers, and among those which were approved by the reigning Roman Pontiff, there are two articles in which the power of the Provincials of this Institute is broadly defined in these words: "To exercise jurisdiction over Rectors, Superiors, and individual subjects; to transfer individual subjects from one house to another; to carry out and direct missions..." XI. "To institute annually a canonical visitation of all colleges, and hospitals, etc."

[*Latin ed. p. 100*]

100. EMPHYTEUSIS AND REDINTEGRATION. In a village situated in the neighboring Diocese of B., there was a mill, formerly used for grinding wheat, which had fallen into disrepair and been leveled to the ground. Damian, by a legal contract, was obligated to rebuild the mill at his own expense, and to pay an annual tax of two measures of wheat to be delivered to the Episcopal granary. Both Damian and his descendants faithfully fulfilled this obligation. Due to the small size of the property, it was considered to be among the urban properties; and therefore, when a tax, commonly called the "real tax," was levied, the mill was exempt from this contribution. However, when the municipality of the town, within whose territory the mill was located, imposed a new tax in the year 1852, this emphyteusis, like other properties, was subjected to this contribution. The direct ownership of this property was recorded in the census registers of the Episcopal See, but the benefit derived from it was registered in the name of Damian's descendants. However, the municipality demanded the tax solely from the Episcopal See; and that See, without any objection, collected the tax for several years. Finally, in the year 1861, the Bishop of the time, convinced that Damian's descendants were obligated to bear this burden, and not the direct owner, summoned Damian's descendants before the ecclesiastical judge of the neighboring Diocese of B. (since one of them was among the clergy), in order that they might restore the tax that had been improperly paid up to that point. In the judicial document, commonly called a summons, the Bishop also reserved the right to bring the matter before a competent court to declare the emphyteusis contract null and void due to the lack of proper formalities and other defects. Considering that

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such a clause had been added, and that they were burdened with expenses and obligated to obey the sacred authority, Damian's descendants, setting aside the noise of the forum, offered their prayers to the Sacred Congregation of the Holy Office and to their Most Reverent Lords, requesting that the validity of the emphyteusis be declared, economically speaking. The Sacred Congregation, following custom, asked the Bishop of the neighboring Diocese of B. for his opinion, and instructed him "to hear both sides (namely, the Bishop of the city, as the direct owner, and Damian's descendants, as the emphyteutes), and to examine the matter carefully."

[*Latin ed. p. 101*]

EMPHYTEUSIS AND REDINTEGRATIONS 101, to bring together useful owners, so that each could present their rights in writing to the Sacred Congregation: all of which were strictly ordered for execution. Meanwhile, while these matters were being handled at the Sacred Congregation, the judgment regarding the restitution of taxes already paid up to that point continued before the ecclesiastical judge of the neighboring diocese of B. And finally, a judgment was rendered against the Emphyteutes, defining the matter. However, in delivering the judgment, in order to favor these individuals, it was stipulated in certain terms that the *tectum* and *sartum* right should be preserved, so that in the actual payment of the sum, they should retain the indemnity for the proportional benefit due from the plaintiff, as is due by law (1). Nevertheless, the victorious Bishop ordered the public official to execute the judgment (as he actually did) for the entire sum, without allowing any deduction for the proportional benefit, to the frustration of the emphyteutes. Therefore, these individuals, because of the voluntary execution ordered by the Bishop, sent a notification to him regarding an appeal, according to the new laws promulgated by Pope Gregory XVI, article 967, and to the same Sacred Congregation, they presented another petition, in which they explained that their right to the restitution of the proportional benefit had been lost in the judgment, and they requested that it be declared that the Bishop, as the direct owner, was obligated to make restitution of the proportional benefit, both for past and for future times. Therefore, the Sacred Congregation requested the Bishop of the neighboring diocese of B. to give his opinion on these new requests, and invited the parties to present their rights before the Sacred Order: which was likewise done. Disputation on the matter. From what we have explained so far, two main points of contention become apparent. The first concerns whether the contracts of emphyteusis (1) are to be understood as pertaining more to the thing itself than to the person, which Pope Pius VII, understanding this to be better for the matter, imposed a fixed and established tax on all properties within the pontifical jurisdiction, commonly called the "Royal Dues," which affected the possessors of the lands, without regard to whether there were other owners present, to whom a

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certain amount should be paid from the land by the possessor. Because he recognized that it was not in accordance with the laws of justice for only one to suffer the burden of public taxes, while another was the owner who received the benefit of the fruits of the land, he wanted to ensure, by his decree, that the possessors should only pay the tax, and should retain for themselves the amount equal to the benefit that the other owner received; which is the same as saying that the tax should be reduced in proportion to the benefit that accrued to the other owner: from this arose the appeal for the restitution of the proportional benefit.

[*Latin ed. p. 102*]

102. The validity of a German *emphyteusis* pertains to its *restitution*, and the *defense* of the Bishop concerns the *restoration of the rightful use of property*. Regarding the first point, it is well known that contracts of *emphyteusis* are entered into under the name of alienation, and therefore, if ecclesiastical matters are involved, they are entirely subject to the censure of the *Extrava: Ambitiosae*. Therefore, in order that ecclesiastical property may be granted in *emphyteusis*, it is necessary that an Apostolic *Beneplacitum* intervene, as the Doctors commonly teach, and as declarations of the Holy Congregations, and daily practice, confirm. Indeed, no monument, no trace whatsoever remained from which it could be demonstrated, nor could one even be indignant, regarding the *emphyteusis* granted in Damiano, that this necessary solemnity had been observed. On the contrary, in the record of all documents preserved in the Chancery, that which we are discussing was neither found nor hinted at. Furthermore, it is undeniable that, for the substance of *emphyteusis*, a script is necessary from Law 1 of the Code of *Emphyteusis*, and even more so if we are speaking of ecclesiastical *emphyteusis*, as is stated in Novel 7 at the end of the preface, and in Novel 20, Chapters 5 and 6, § 2; which is universally taught by the Doctors of both laws, as found in Ferraris, *V. Emphyteusis*, Article 1, number 13. However, although all kinds of investigations were not neglected, it was nevertheless impossible to find the document, but on the contrary, it was known, both from public reputation and from several other examples, that the aforementioned Notary and Episcopal Chancellor of that time, when the *emphyteusis* was initiated, was so negligent that he would record public instruments as if they were completed and executed, when in truth they had never been properly recorded, either at that time or afterwards, according to the prescriptions of the law. Finally, one could have improperly sought refuge in the presumption of the law, as if the *Beneplacitum* and the script were to be considered present, until otherwise proven; for all, even beginners in jurisprudence, know that any presumption must yield to the truth; but the truth was, as is evident from the foregoing, that neither of those two solemnities was present in our case.

DEFENSE OF THE BISHOP REGARDING THE SECOND DOUBT. —

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Having now turned to another point of contention, which concerns the undue payment of taxes.

[*Latin ed. p. 103*]

EMPHYTEUSIS AND RESTITUTION. The matter of the restitution owed by IOB concerned the Bishop, who observed that an error had been committed by the Municipality: the contribution was being assigned to the direct lord, and not to the beneficial lord, because in the census records, the direct lordship of Molendini was listed as belonging to the Episcopal See. However, this error could easily be rectified if one were to pay a little attention, since, according to common law, all contributions are to be paid by the emphyteuta, and not by the direct lord; Leg. 5 Cod. de Cens. Voet Lib. 6 Tit. 3 n. 12. This legal principle is only avoided if it can be proven that something else was agreed upon in the contract. Indeed, in this case, it should be assumed that no agreement whatsoever had been made, because it was established that no document had been completed. Furthermore, the law, which left the emphyteuta to deduct only the amount that the direct lord receives from the assessed property, according to the intention of the legislator, was restricted to a single contribution, which was then levied under the common name of the "Real Dative." However, the price paid by the Bishop in previous years was unjustly demanded, not because of a tax imposed by the Prince, but because of a charge inscribed by the Municipality, and therefore it should be considered as a municipal charge, and not a "Camerale," as it is called in the pontifical jurisdiction, or "Regium," as elsewhere, but only municipal. Therefore, any obligation to remit the full amount of the charge was absent. Furthermore, the Bishop unjustly insisted on imposing a judgment, for when a limitation is added regarding the deduction of the full amount to be made by the emphyteuta, a clause is added, "as far as and to the extent that it pertains to the emphyteuta according to law," which clauses are important, as Barbosa De Claus. 115 n. 12 and Rota Devis. 341 n. A p. 5 Rec. state, namely, to the extent that this pertains to the emphyteuta according to law. But from what we have stated, it is clear that, according to common law, all charges are to be assigned to the beneficial lord, and not to the direct lord. In addition, the Bishop raised other objections that demonstrated the lack of competence of the Ecclesiastical Judge of the neighboring Diocese of B; but these are of little importance.

DEFENSE OF EMPHYTEUTAE REGARDING THE FIRST POINT. On the part of the emphyteuta, the objections raised against the Bishop did not, in the first place, concern the validity of the document as the foundation of the emphyteutic contract; but rather, they argued that it was clear that, in

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the emphyteutic concession to Molendini, the document—

[*Latin ed. p. 104*]

104. EMPHYTEUSIS AND REDINTEGRATION. It would have been the case, indeed there existed a positive document, produced by the Bishop himself, or at least not impugned, which in reality existed: it was evident, from the administration records, the date and year on which the contract was celebrated, and furthermore, the Notary was named who had drawn up the instrument. Another thing is that the Scripture was not involved, another is that it was not found and had been lost. The same must be said of the Beneplacito Apostolico; for it cannot be inferred from the fact that it is not found, that it was not obtained. But, precisely because the Scripture was involved, the Beneplacito, whose text is usually referred to therein, must also be considered to have perished along with it. But there was another defense, with which the emphyteutes tenaciously defended their rights; this was the prescription of more than sixty years. In this matter, it was established, according to the common law of the Holy Canons, that for the prescription of ecclesiastical goods, a period of thirty years was sufficient, provided the conditions prescribed by law were met. Furthermore, the Bishop could not vindicate the benefit from the Constitution of Pope Urban VIII, the Roman Pontiff, according to which it was decreed that, for the prescription of ecclesiastical rights, a very long period of time was required. The emphyteutes, indeed, maintained that the Constitution of Urban VIII was in force at that time, when the Church had suffered a detriment in the celebration of the contract. Moreover, everywhere in the body of this Constitution, in the very words used, this provision is adapted to those cases in which the Church has suffered prejudice; in fact, everywhere, and more frequently than can be said, it is repeated in prejudicial matters, concerning prejudicial matters, and similar things. Consequently, the Sacred Roman Rota, from that very time when the pontifical sanction was promulgated, to these times, has received and taught this as a constant and perpetual discipline, namely that the application of this Constitution does not take place, unless when the Church proves that it was harmed and prejudiced at the time of the initiation of the contract. Thus, it is derived from Decr. 48 § id. Part. 13 Rec. Decr. 1166 n. 5 before Emerix, in Melevitana Immiss. 11 June 1781 §. 1 before Flangini, in Confirmatoria 6 June 1783 §. 5 before the same (1). This doctrine is supported by others (1) It is fitting here to write, in the very words of the author of this decision, "There" -there- "the change of the old law was made by that" constitution (of Urban VIII).

[*Latin ed. p. 105*]

EMPHYTEUSIS AND THE RESTITUTION OF RENT. 10. According to the decisions of the Sacred Roman Rota, and more recent and better-known interpreters. See the Canons, namely Passerin, *De Stat. hom.*, Vol. 1, ques-

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tion 18, article 8, number 613; Monacell, *Form. Legal.*, Title 14, form 4, addition number 15; Pitonius, *De Contr. Patron.*, Allegation 36, number 20. The Emphyteutes presented further documents, from which it was demonstrated that the episcopal estate had not been harmed at all by the granting of the mill in emphyteusis, but rather had derived the greatest benefit; for from a small plot of land, which in the census records was not valued at more than three or four scudi, and which furthermore produced no income for the episcopal estate at that time, the emphyteusis had secured a perpetual payment of two measures of wheat to be delivered to the episcopal granary.

DEFENSE OF THE EMPHYTEUTES REGARDING THE SECOND DOUBT. After refuting and overturning the first point of contention, they addressed the arguments that were being raised against them, aiming to demonstrate the validity of their position. However, they noted that, in anticipation, the ecclesiastical judge of the neighboring diocese, B., had, at the Bishop's command, executed a judgment, and that this judgment, as the jurists say, had transformed a white situation into a black one; and that, even if it were unjust, it should be considered just, until it was restored to its original state and rendered null. Regarding the merits of the case, they did not generally deny that the impositions levied on the emphyteutic property by the Prince should be borne by the Emphyteute; but they distinguished between ordinary impositions, which can easily be foreseen, and extraordinary impositions, which cannot be foreseen by the contracting parties and which are similar to unforeseen circumstances. They maintained that the Emphyteutes were not subject to such extraordinary impositions, citing the authority of the Sacred Roman Rota and of learned Doctors. They argued that taxes levied by the Municipality should be considered to be of this extraordinary nature; for they maintained that these taxes were not imposed on "all contracts," but only on "those contracts that certainly caused damage to the Church." Therefore, they argued that the Bishop's approval, "whose force remains for thirty years," even after the Constitution *Urba*, remains valid, unless it is proven that the Church suffered damage at the time the contract was initiated, as is demonstrated by the authorities cited in the other decision, §. t. etc.

[*Latin ed. p. 106*]

106. EMPHYTEUSIS AND REDINTEGRATION: The ratio of the contracting parties could not, at the time the contract was initiated, have foreseen that these burdens would be imposed by the Municipality. In confirmation of this, a certain decision was presented in the Romana Pecuniaria on May 1, 1854, before Giannelli, in which the taxes imposed by the Roman Municipality were assimilated to a fortuitous event, and therefore were not to be borne by the one who had only undertaken ordinary and easily

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foreseeable burdens. The defense of the Emphyteutae rested on this point: for any other argument presented was of lesser importance and should therefore be dismissed. With these premises established, on May 6, 1864, the following questions were proposed in the plenary session of the same Sacred Congregation: 1. ”Whether and how emphyteusis is maintained in this case.” 2. ”Whether the matter is already decided, even regarding the deduction of rent in this case.” The Fathers responded: To the first question, affirmatively. To the second question, after reformulation of the question as, ”Whether there is room for the deduction of rent in this case,” negatively. CONTINUATION OF THE SAME ARGUMENT REGARDING THE SECOND QUESTION. The resolution of the first question was accepted by both parties, namely by the Emphyteutae, for whom it was favorable, and by the Bishop, who did not object. However, the resolution of the second question was not pleasing to the Emphyteutae, who considered themselves safe under the shield of the *res judicata*. Therefore, without delay, the Emphyteutae petitioned the Sacred Congregation to call for a repeated consultation regarding the matter. Having obtained this, the Bishop was warned to present new arguments, if he so desired, which he replied he had nothing further to present. The Emphyteutae, having changed the basis of their defense, argued two points: first, that the agreed compensation should be maintained, not only for taxes of a Cameral or Royal nature, but also for municipal taxes, provided they were real and not personal. Secondly, they maintained that the emphyteusis in question, if its substance rather than its name and appearance were considered, should be considered entirely as a lease and a concession.

[*Latin ed. p. 107*]

EMPHYTEUSIS AND RESTITUTION. 107 Firstly, they argued that the tax imposed by the Municipality was nothing other than an addition to the real estate tax (Dativa realis); since, they maintained, an accessory follows the principal, it followed that in the Municipality’s assessments, the principle of *rata commoditatis* should hold, just as it did in the real estate tax. This argument gained greater force from the fact that, upon closer examination, this municipal tax was nothing other than a tax levied by the Chamber. Indeed, initially, the care of roads throughout the entire papal territory, and of each province within the government’s jurisdiction, belonged to the government; and for this purpose, one-tenth of the real estate tax was allocated. Later, the burden of maintaining the roads of the province was transferred to the provincial treasury, thereby providing the provincial governor with resources. Consequently, the municipalities, which were part of the provincial treasury, began to impose new taxes, as indeed happened, designating and taxing all properties according to the census tables. Furthermore, they maintained that the same principle should be applied where the same reasoning is recognized to be valid. However, they argued

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that the benefit of *rata commoditatis* introduced by the Prince was nothing other than a just and equitable measure, since it would be unfair and unjust to burden only the owners of properties, such as emphyteutes, with a tax, while allowing others who derived benefit from the same properties to remain exempt. Moreover, it was difficult and troublesome for the government to investigate and pursue direct owners; therefore, it was stipulated that the government should require the emphyteutes to pay, while the emphyteutes, in turn, should demand restitution from their direct owners. Indeed, the same principle applied to taxes levied by the Municipality on properties; for if both the direct owner and the emphyteute derive benefit from the property, it would be a great injustice if the direct owner did not bear the burden of the tax in proportion to the benefit derived, while the emphyteute bore the entire burden. All of this was confirmed by a decision of the Roman Sacred Rota, in which, after careful deliberation, it was ruled that *rata commoditatis* should be applied to all real estate taxes, and not to any personal taxes, whether levied by the Prince, the provincial governor, or the municipal magistrate. The specific case before us was very similar to those considered. Certain properties had been granted to the Brothers of Menzoni in emphyteusis.

[*Latin ed. p. 108*]

EMPHYTEUSIS AND REDINTEGRATION. This pertains to a perpetual emphyteusis, with the added condition that all burdens, whether foreseen or unforeseen, be borne by the beneficiaries, and that this be duly noted. When the real estate was first granted, and subsequently other burdens were added by the Province or the Municipality, in accordance with what has been mentioned above, the Brothers Menzoni requested the direct lord to retain the agreed-upon benefit. The matter was brought before the Sacred Roman Tribunal in Macerata, concerning the emphyteusis and the agreed-upon benefit, on January 28, 1842, which ruled that the agreed-upon benefit should be retained, and that all real burdens, and not personal ones, should be included in its liquidation. However, among these real burdens, it was established that the land tax, imposed by the Municipality, and other charges ordered by the Provincial Governor, should be included. This issue was repeatedly discussed in the Sacred Roman Tribunal, but to no avail; despite the insistence of the direct lord, the restitution was not granted to the Menzoni brothers. However, the Royal judgment was upheld, and therefore the principle that the agreed-upon benefit must be deducted from all real burdens of any kind, as long as they are not personal, became more firmly established.

Following this, the emphyteutae proceeded to demonstrate another aspect of their defense. Repeating the rights from which the emphyteusis originated in Roman law, they argued that its nature is such that barren and uncultivated lands are granted to someone for a small payment, as a sign

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of recognition of the lord's dominion, so that they may be cultivated, improved, or brought into a better state. However, when this payment is too small, or conversely, when the payment corresponds to the natural fruits of the land, then the essence of the emphyteusis is lacking, and instead, a lease or tenancy is created. In fact, such concessions, while bearing the name of emphyteusis, in reality function as leases or tenancies. This doctrine is so well-established that it is commonly accepted by tribunals and jurists that contracts of this type, when the payment equals the fruits of the land, are not considered emphyteuses, but rather leases or tenancies (1).

(1) Contrary to this doctrine, which is found in Disputation 69, number De Emphyt., it is stated: "However opportune the reason may be, the following limitation by the most esteemed Cardinal De Luca must be remembered and kept in mind: 'Where a large payment corresponds to the fruits of the land, this is a strong argument that it is rather a lease than an emphyteusis.'"

[*Latin ed. p. 109*]

EMPHYTEUSIS AND REDINTEGRATION. 109 With these premises established, the proponents of emphyteusis argued two points, one concerning fact and the other concerning law. Firstly, they demonstrated that the canon of two measures of wheat was not only equal to the customary dues received by the miller, but even surpassed them, to the considerable benefit of the episcopal estate. Subsequently, since it is universally understood that in a lease or tenancy agreement, all obligations are to be borne not by the tenant, but by the lessor, according to the common law, they argued that all the burdens imposed and to be imposed on the miller should not be borne by them, as tenants, but by the Bishop, as the lessor. Therefore, they desired that the Bishop should not demand the customary payment, but rather should bear the entire burden of the tax. Thus, on August 12th, the following question was proposed: "Whether and how a rescission can be obtained from the first question (1)." *emphyteusis; however, these and similar circumstances do indeed suggest a flaw or presumption in the argument, whereas if the parties certainly intended to enter into an emphyteutic contract, then, when clear and explicit questions and arguments are present, the matter is different. For otherwise, emphyteusis could never be granted in the Church, which, in certain cases as mentioned in chapter 5 and following, is prohibited from making such concessions without a just and evident cause, as explained in the section on the alienation of ecclesiastical property under the title "De Alien." and "contract. prohib." Discourse, 1 and following (1). From the most ancient times, it has been the practice in the Sacred Roman Rota Tribunal that, in judicial controversies brought before it, the matter is reduced to the simplest possible expression, so that the Fathers of that Sacred Order, to whom the task of rendering judgment is entrusted, are asked, through a simple and concise formula of doubt or

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question regarding the entire controversy, to express their opinion with a mere affirmative or negative response, and thus to define and resolve the entire dispute. Thus, for example, if there is a question regarding the obligation to render an account concerning the administration of certain property, the question might be: "Is there an obligation to render an account in the case under discussion?" If the Fathers respond negatively, then the person whose obligation is in question is to be considered not obligated to render an account; and conversely, it is established that he is obligated to render them if the same Fathers respond affirmatively. The Sacred Congregation of the Alma City follows a similar practice, more or less, in presenting matters and consultations to them. Indeed, when a controversy arises due to the request for a new hearing, after hearing the parties as before, a formula of doubt or question is used. The question is: "Should we stand by or recede from the previous decision?" This means whether the decision that was reached in the previous presentation of the case should be maintained, or rather, should be withdrawn. In the first case, the Fathers respond "Stand by the decision," and it is understood that the sentence that had already been pronounced has been confirmed; in the second case, the Fathers use the response "Recede from the decision," by which the sentence is revoked, and the one who had been victorious becomes the one who succumbs, and vice versa. If a third...

[*Latin ed. p. 110*]

ON THE QUESTION OF EMPHYTEUSIS AND RESTITUTION. The Fathers responded, stating: It should be written to the Episcopal Administrator (of the Diocese of B.) so that he may provide clarifications, as indicated on the document from the Most Reverend Cardinal Ponent.

FINAL CAUSE FOR DECISION. – Those matters which were deemed necessary were indicated on the aforementioned document, and they primarily concerned whether the tax levied by the Municipality on the mill should be considered a real or a personal tax: for in the preceding arguments, certain circumstances had been presented which did not make this matter clear or evident. However, the Emphyteuta immediately presented the matter, and, having submitted documents relevant to the case, demonstrated that there was no doubt that, in the case in question, the municipal tax should be considered among real burdens. Therefore, the proposal was again raised on April 28th of the current year, as a Doubt: "Whether and how one should depart from the resolution reached, according to the doubt in the case."

RESOLUTION OF THE DOUBT. – The Fathers responded: One must depart from the decisions, and there is a place for the retention of the due compensation in the sum to be paid by the Most Reverend.

FROM THE PRECEDING.

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I. To prescribe matters and rights of the Church, a period of thirty years is sufficient.

II. A period of one hundred years is necessary if the Church has been harmed in entering into a contract.

III. The Constitution of Urban VIII should be understood in this sense, as issued by the Roman Pontiff on this matter.

IV. The burden of proving the harm suffered at the time the contract was initiated rests with the Church.

V. The retention of the due compensation has its place in all real burdens, whether they are levied by the Supreme Prince, or by the President of the Province, or by the municipal magistrate.

A third cause for discussion, benefiting from new information, is proposed: whether this formula should be followed. Whether one should adhere to the first or the second decision. The Fathers' response is: Whether one should adhere to the first or the second decision, depending on whether the first or the second opinion is confirmed.

[*Latin ed. p. 111*]

FROM THE HOLY CONGREGATION FOR RITES, TOLOUSE, CONCERNING THE CANONIZATION OF BLESSED GERMANE COUSIN, LAY VIRGIN, OF THE TOWN OF PIBRAC, IN THE DIOCESE OF TOLOUSE.

DECREE: "The very goodness of God, which had taken young David from the flocks of sheep, that he might rule Israel, and hold the royal sceptre in the house of Jacob, in like manner, took the humble maiden, Blessed Germane Cousin, from the care of sheep, and, wonderfully surrounding her with the splendor of virtues, raised her to the sublime throne of eternal glory. And just as to David He gave the power to bring salvation to Israel, when He took him from the land of the barbarians, so also to Germane He gave the power to meet the sorrows of men, and to drive out the invincible infirmities from the bodies of the sick. Therefore, the Holy Congregation for Rites, having diligently investigated the healings, which, through the intercession of Blessed Germane, were reported to have been granted by God after the granting of veneration, ordered a most careful examination. And the Most Holy Pope Pius IX, having promulgated a Decree on the seventh day before the Kalends of March of this year, declared that two miracles have been established, namely, the first, the instantaneous and perfect healing of Anne Marie Noel from a spontaneous dislocation of the hip; and the second, the instantaneous and perfect healing of Francisca Huot, in the religious community, of the sister Julia Germane, from a chronic inflammation of the spinal cord."

"After these things, nothing remained to be done in this most illustrious cause, in order that it might be brought to its conclusion as quickly as

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possible, except that final declaration, by which the way to the Rite of Canonization would be made certain. Wherefore, in the General Congregations held in the Vatican Basilica..."

[*Latin ed. p. 112*]

112 DECREE CONCERNING THE CANONIZATION OF BLESSED GERMANA COUSIN. On the sixth of the Ides of April of the present year, before the Most Holy Lord, the Most Reverend Cardinal Joseph Bofondi, in place of the Most Reverend Cardinal Charles Aloysius Monchini, who was absent, proposed the question: "Can the process proceed safely towards the solemn canonization of Blessed Germana Cousin?" And all the Most Reverend Fathers Cardinals, together with the Consultors, gave an affirmative response. "However, the Most Blessed Father did not immediately reveal his mind, but admonished those present to earnestly implore Divine Wisdom, that in its light he himself might see." Finally, he designated the present day, namely the seventh Sunday after Pentecost. Therefore, His Holiness, residing in the Palace of Gandulf, after having offered the Holy Sacrifice privately in the chapel of the Pontifical buildings, went to this parochial church of the same Palace; and there, after having attended the Holy Sacrifice, he summoned the Most Reverend Cardinal Constantinus Patrizi, Bishop of Porto and Santa Rufina, and Prefect of the Congregation for Sacred Rites, and the Most Reverend Cardinal Joseph Bofondi, Relator of the Cause, together with the Reverend Father Peter Minetti, Promoter of the Holy Faith, and myself, the undersigned Secretary, and, in their presence, duly pronounced: "That the process can safely proceed towards the solemn canonization of Blessed Germana Cousin." "This decree was ordered to be made public, to be recorded in the acts of the Congregation for Sacred Rites, and to dispatch Apostolic letters under seal concerning the solemnities of the canonization to be celebrated whenever in the Patriarchal Basilica of the Vatican." On the tenth day before the Kalends of August of the year 1865, [signed] C. Bishop of Porto and Santa Rufina, Card. PATRIZI, S. R. C., D. BAKTOUNIS, R. C., Secretary.

[*Latin ed. p. 113*]

THE FORMULA FOR THE BLESSING OF THE TELEGRAPH. The clergy, either from the nearest church or from some other prepared location, shall proceed to the telegraph station, singing or reciting the following: "Benedictus Dominus Deus Israel," at which point the Bishop or a priest holding some ecclesiastical office shall intone the following antiphon:

Antiphon: "Blessed are you, O Lord, who places a cloud as your ascent; who walks upon the pinions of the winds; who makes your angels spirits, and your ministers a burning fire."

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After this, the Psalm 103, "Bless, O my soul, the Lord," shall be recited, as at Matins on the Sabbath; and the antiphon shall be repeated, beginning the Blessing in this manner:

V. Aid us in the name of the Lord.

R. Who made heaven and earth.

V. The Lord be with you.

R. And with your spirit.

Let us pray.

"We beseech you, O Lord God, grant to your servants that they may always rejoice in perfect health of mind and body, and through the glorious intercession of the ever-Virgin Mary, may they be delivered from present sorrow, and may they enjoy eternal joy. Through Christ our Lord.

R. Amen.

Let us pray.

"O God, who walks upon the pinions of the winds, and who alone works wonders; grant that, just as through the power imparted to this metal, you transmit messages more swiftly by a lightning strike, both from here and to other places, so too, may we, enlightened by new discoveries, and with your grace assisting us, be able to come to you more readily and easily. Through Christ our Lord.

R. Amen.

Then, the telegraph shall be sprinkled with blessed water.

(Acta, vol. i, p. 11.)

[*Latin ed. p. 114*]

114 FORMULA OF THE BLESSING FOR THE RAILWAY JOURNEY. The clergy, either from the nearest church, or from some other designated place, shall proceed to the railway station, singing or reciting. Antiphon: May the Almighty and merciful Lord direct us on the path of peace and prosperity; and may the Angel Raphael accompany us on our journey, that we may return to our homes in peace, health, and joy. Canticle: Blessed be the Lord, God of Israel, etc. There, the Bishop or Priest, holding some ecclesiastical dignity, repeating the Antiphon, shall intone: Kyrie eleison, Christe eleison, Kyrie eleison. Our Father, in secret. And lead us not into temptation. R). But deliver us from evil. V. Save Thy servants. R1. O my God, in Thee do I hope. R1. Send us help from the Holy One. R1. And from Zion, protect them. V. Be to us, O Lord, a tower of strength. R). Against the face of the enemy. V. Let the enemy have no power over us. R1. And let the son of iniquity not be able to harm us. V. The Lord is daily my protector. R1. May God make our journey of salvation prosperous. V. Show us Thy ways, O Lord. R1. And teach us Thy paths. V. May our steps be directed. R1. To keep Thy justifications. V. They shall be corrected in the right way. R1. And the

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rough places shall become level paths. V. God hath commanded His angels concerning thee. R1. That they may keep thee in all thy ways. V. Our help is in the name of the Lord. V. Who made heaven and earth. V. O Lord, hear my prayer. R1. And let my cry come to Thee.

[*Latin ed. p. 115*]

FORM OF BLESSING. FOR RAILWAYS.

R.) The Lord be with you.

R.) And with your spirit.

Let us pray. Almighty and eternal God, who created all things for your glory and the benefit of mankind: deign to bless this railway and its instruments, and to protect them always with your benevolent providence; that as your servants travel swiftly along this road, walking in your law and running in the way of your commandments, they may safely reach the heavenly homeland. Through Christ our Lord.

R.) Amen.

Let us pray. Merciful Lord, hear our prayers, and bless these carriages with your holy right hand, and join them to your holy angels, that all who travel in them may be delivered and protected always from all dangers: and as you brought faith and grace to the man of Ethiopia who was sitting in his chariot and reading the sacred Scriptures through your servant Philip, so show the way of salvation to your servants, who, aided by your grace, and constantly devoted to good works, may deserve to attain eternal joys after all the trials and vicissitudes of this life. Through Christ our Lord.

R.) Amen.

Then, the road and the carriages are sprinkled with blessed water.

After each Blessing, the Te Deum is said, with the following prayer: God, whose mercy endures forever.

BRINDISI AND OSTUNI.

Our most holy Lord, Pope Pius IX, mercifully granting the supplications of the Most Reverend Raphael Ferrigno, Archbishop of Brindisi, and Administrator of the Diocese of Ostuni, as reported by the Substitute of the Congregation of Sacred Rites, has granted that, in both dioceses, the abovementioned formulas of blessing, already approved by the Sacred Rites Congregation for the blessing of the Telegraph and the Railway, may be used. Contrary to anything to the contrary notwithstanding.

April 6, 1865.

[*Latin ed. p. 116*]

116 FROM S, THE CONGREGATION FOR INDULGENCES. DECREE

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OF THE CONGREGATION OF SAINT BENEDICT IN GALLIA. "In the general meetings of this Holy Congregation for Indulgences, held on February 29, 1864, the following questions were proposed by John Baptist Nicolas Monachum, of the Gallican Congregation of Saint Benedict." 1. "Since, according to various decrees of the Holy Congregation for Indulgences, it is already permitted to gain several plenary indulgences on the same day, provided that the conditions are fulfilled, it is asked whether the aforementioned decree pertains only to indulgences occurring on the same day due to a feast day, or rather, also to those which each individual adds to that day, either weekly or monthly, due to their devotion." 2. "If someone wishes to make use of the aforementioned decree, are they obligated to visit the church or public oratory (when such a visit is required) as many times as there are indulgences to be gained?" "And to this, the answer is affirmative." 3. "Is it sufficient that the same prayers or visits be repeated in the same church as many times as there are indulgences to be gained, without the person having to leave the church after each visit and then re-enter it?" "After these matters were carefully discussed by the Most Eminent Fathers, and after considering the votes of the Consultors, it was decided that the following answers should be given: "To the first question, affirmative. To the second question, affirmative. To the third question, negative." Given in Rome, from the Secretariat of the Holy Congregation for Indulgences, on February 29, 1864. F. ANTONIUSMARIA Card. PANEBIANCO, Prefect. In place of g3, Sign A. COLOMBO, Secretary.

[*Latin ed. p. 117*]

DECREE OF THE CONGREGATION OF SAINT BENEDICT IN FRANCE, U7. The entire opinion of the Consultors is summarized below. We join together the two opinions of the Consultors, which were entirely in agreement, extracting from each what is most pertinent to the matter.

REGARDING THE FIRST DOUBT. — The Consultors judged that the first doubt should be answered affirmatively. The decrees issued by the Holy Congregation of Indulgences, which declare that anyone can gain multiple plenary indulgences on the same day, make no distinction between plenary indulgences that occur together on the same day due to some feast day, and those that each individual has attached to that day through their devotion. It seemed sufficient to the Consultors that the conditions prescribed for gaining each indulgence be fulfilled, even if those indulgences are repeated on the same day. Where the law does not distinguish, neither should we. The matter concerns a situation in which there does not appear to be a sufficient reason for making such a distinction; indeed, on the contrary, it is clear that the Holy Pontiffs, who have granted this permission to the faithful to establish a day for gaining an indulgence, have desired to grant the faithful such freedom that they have never made any exception in various indulgences regarding this matter. Furthermore,

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the resolution of the Holy Congregation of Indulgences of December 4, 1843, is relevant. If the Bishop of Boiacensis in France had obtained an Indult for his diocese, by virtue of which the faithful of that diocese, who would make sacramental Confession within one or two weeks, could, during the same period, enjoy plenary indulgences in any church or public oratory, and if it was asked, "Does the aforementioned Indult pertain only to local indulgences, or to any plenary indulgences whatsoever?" the answer given by the Holy Congregation was: "It is to be understood that it pertains to all indulgences, both local and personal, for which sacramental Confession is required as a condition."

REGARDING THE SECOND DOUBT. — Regarding the second doubt, the Consultors also maintained an affirmative opinion. Indeed, according to the decrees or resolutions of the Holy Congregation, the conditions must be fulfilled.

(1) This constituted the privilege of the Indult, namely, that the sacramental confession should be made not within one week, as is customary, but within two weeks.

[*Latin ed. p. 118*]

1. Regarding the Decrees of the Congregation of St. Benedict in GALLIA concerning Indulgences: For each Indulgence to be gained, the prescribed visitations must be performed. If a visitation is prescribed for each Indulgence, then the number of visitations to be repeated will be equal to the number of Indulgences to be gained. For a visitation is a condition that can be repeated on the same day. However, if the Holy Congregation, in response to a question posed on March 29, 1841, regarding whether "several plenary Indulgences can be gained on the same day, when, for each, the 'reception of Holy Communion' is prescribed," answered affirmatively, while still observing the other conditions that are prescribed; therefore, the reception of Holy Communion, for each individual, is deemed sufficient, because this act cannot be repeated on the same day. Nevertheless, the other prescribed and respective conditions must be observed.

2. REGARDING "THE THIRD QUESTION. It was observed concerning the third question that visitations to the Church, and repeated prayers within the church corresponding to each visitation, cannot be equated. Indeed, although prayers are included under the term 'visitation,' it is not merely prayers that are meant, but rather the direct act of entering the church. Furthermore, the works prescribed for gaining Indulgences must be performed in the manner and form in which they are prescribed, and not altered or fabricated according to the disposition of each individual. Moreover, it was noted, following Suarez, that a visitation, for the purpose of gaining an Indulgence, is an approach to the sacred place, proceeding from faith and religion, with the intention of worshipping God there, either in oneself or through a saint. But this complex condition would not be

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fulfilled by one who merely repeated prayers, as many times as there were visitations to be made. Benedict agreed with this, who, in his treatise on Indulgences, book 3, chapter 1, paragraph 5, number 32, states: "It follows that he who visits the church more frequently on the same day can gain the Indulgence as many times as he prudently and devoutly approaches the Church." To this he adds: "Unless, that is, he merely enters the church and immediately leaves." These words, according to what Suarez taught, demonstrate that, by the term 'visitation,' a complex act is meant, so that neither the one who merely repeats the prayers of the visitations will fulfill the requirement, nor will the other fulfill it by merely showing his presence in the church. Finally, to further confirm this, it was observed that it is customary for the Christian people to repeat their entrances and exits from the church for the purpose of fulfilling the visitation, in the matter under consideration. This happens on the second of August, when—

[*Latin ed. p. 119*]

DECREE OF THE CONGREGATION OF SAINT BENEDICT IN FRANCE. 119, concerning the most celebrated Indulgence, known as the Portiuncula; a custom which is observed most strictly in Rome. Indeed, Pope Benedict XIV, in volume 14 of the Prato edition, year 1845, § 26, concerning the Portiuncula Indulgence, states: "(Regarding the Portiuncula Indulgence, it is not disapproved of that pious and ancient custom by which the faithful frequently enter the Sacred Chapel, or other churches to which the aforementioned Indulgence extends, believing that they can obtain it many times. And indeed, when it was reported to the Holy Congregation by a certain Bishop that the Reformed Brothers of the Order of Saint Francis in the province of Carniola were persuading the people to enter the same place more frequently on the same day... and when it was asked whether this could be tolerated; the Holy Congregation, on July 17, 1700, responded as follows: The Holy Congregation of Emissaries of the Holy Roman Church, Cardinals, Interpreters, having heard the report of the General Procurator and the Provincial Minister, decided that the custom should be maintained.)" Therefore, concerning the third question, the Consultors believed that the answer should be negative.

THEREFORE, IT IS UNDERSTOOD:

1. Several distinct (1) plenary Indulgences can be obtained on any given day, whether these are personal or local, provided that the conditions prescribed for each Indulgence are observed.

2. If the same conditions are prescribed for each Indulgence, these must be repeated as many times on the same day as the Indulgences are to be obtained, if they are repeatable.

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3. One and the same plenary Indulgence cannot be obtained multiple times on the same day. This was declared in the Decree of March 7, 1678, which begins: "Delatae saepius..." The relevant words of the Decree are: "However, the plenary Indulgence granted to those who visit the church on certain days, or who perform a pious work, can only be obtained once in a day." However, the most celebrated Portiuncula Indulgence, or any others similar to the Portiuncula, are excepted. Regarding the Portiuncula Indulgence, when a question was raised in Valentia on February 22, 1847, it was expressed in these words: "Can visitors to the churches of the Order of Saint Francis obtain the plenary Indulgence as many times as they enter them and pray there, and is it required that Communion be received in the same church?" The Sacred Congregation decided to respond affirmatively to the first part, and negatively to the second. Therefore, a person can obtain such an Indulgence as many times on the same day as they visit the aforementioned churches.

[*Latin ed. p. 120*]

120 DECREE OF THE CONGREGATION OF SAINT BENEDICT IN FRANCE. III. Among the conditions that must be enumerated repeatedly is the Visitation of the Church, if a Visitation has been prescribed. IV. By the name "Visitation," however, is understood the approach to the sacred place, proceeding from faith and religion, with the intention of worshipping God there, either in oneself, or in some Saint. V. Therefore, repeated Visitations of the sacred place, with repeated prayers, cannot be equated; each Visitation must correspond to its prayers. VI. Consequently, just as he would not fulfill the prescribed Visitations who, merely by repeatedly exhibiting his presence in the sacred place, would not offer the due prayers; so, conversely, he would not fulfill them who, with a single approach to the sacred place, would offer prayers corresponding to multiple Visitations. Therefore, both must be repeated together.

[*Latin ed. p. 121*]

APPENDIX IV. CONCERNING MARRIAGES CONTRACTED UNDER A CONDITION, IF THE POPE SHOULD GRANT A DISPENSATION.

A certain question arose among the Doctors concerning whether those betrothed should renew their consent in the case of marriages contracted under the condition that the Pope should grant a dispensation, among those who are not permitted to enter into marriage due to an ecclesiastical impediment. Many Doctors, and others, have discussed this matter, as seen in the writings of Abbot [name not provided], chapter 8, and Cardinal De Luca in *De Matrimonio*, discourse 7, number 4, among others. The Sacred Roman Rota has consistently held, as seen in the recent decisions, part 5, and in the confirmation of the aforementioned decisions, 107, in part 8, that a distinction must be made in this matter. If the impediment

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is such that the Most Holy Pope does not usually remove it, then those who are betrothed are of the opinion that the betrothal is null. However, if the Most Holy Pope is accustomed to grant a dispensation in such cases, then, in their opinion, the betrothal is valid, although it is contracted under a condition. They held that the betrothed were obligated to take care to remove the impediment, so that neither would be permitted, without the consent of the other, to break the betrothal, either before or after the dispensation has been obtained, as can be seen in Sánchez, *De Matrimonio*, book 5, discourse b, number 12, and in De Justis, *De Dispensatione*, book 2, chapter 1, from number 78 to 88, and in many other authors.

It is not a new doctrine of the Sacred Congregation that, if the betrothal is between those who are impeded by reason of consanguinity, and the Pope has granted a dispensation, then the betrothal is valid. This is evident from the writings of Sánchez, *De Matrimonio*, book 5, discourse b, number 12, and in De Justis, *De Dispensatione*, book 2, chapter 1, from number 78 to 88, and in many other authors.

However, other Doctors have held, and hold, that if the betrothal is between those who are impeded, whether it is contracted with a hope of obtaining a dispensation, or under a condition, it is always and absolutely null; so that, as the Bishop reports in a letter sent to the Sacred Congregation, "By special letters transmitted to this Congregation, Bishop [name not provided] reports that, after obtaining a dispensation from Vincent [Sci], the betrothal is valid."

[*Latin ed. p. 122*]

122 APPEI D 1 X I V. "Matthaeus, and Magdalena, daughter of John Scivoli, both of Parobitar, were betrothed. There was doubt concerning whether they, being related by the fourth degree of consanguinity, had contracted a marriage which would be valid. They had entered into betrothal agreements before witnesses, relatives, and friends, which agreements were considered invalid for marriage according to the law, under a certain condition. It was stipulated that Vincent, the betrothed, would have to obtain an apostolic dispensation regarding this impediment; and that afterwards, Vincent would be burdened with the obligation of this dispensation. However, the Holy Congregation, after consulting with theologians and doctors, judged that the betrothal should not be considered valid, and that those who are ineligible by ecclesiastical law for a legitimate marriage are not bound by any obligation to observe such betrothals. Therefore, a reasonable question arises. The aforementioned Magdalena, persisting in the betrothal, appealed to the same Bishop, who, however, humbly implored His Eminence and Lordships to grant the dispensation. Upon this declaration, it was noted that, in this case, as in others which we will mention later, it does not always appear in each

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instance whether the parties have deliberated in their minds. In this matter, as in the past, the Congregation ordered that it be noted on the page (1); and now, in obedience to these commands, it is presented again.

Whether the betrothal is valid in this case.

Answer: It is not valid. In this specific case, as you observe, we are dealing with betrothals between those related by blood, concerning which the existence of the betrothal is considered invalid unless the aforementioned condition is fulfilled, namely, that the Pope grants a dispensation. (1) If any reason which should be explained is presented on a page by the Secretary among the petitions which are now called Summaries of Prayers, the Holy Congregation orders that it be noted on the page, as happened in the present case. See page 13 in the note.

[*Latin ed. p. 123*]

APPEN, if he has saved [money], so that those entering into the agreement may firmly consider the obligation: "It is given: X I IV." "Usufruct without a person" (which, being suitable for use, cannot be relinquished by the one who was given it, whether willingly or unwillingly; therefore, a hereditary slave is useless, either before or after the condition). If the usufruct is fulfilled, the betrothal is not maintained. But if it is possible for him to grant the usufruct, then the stipulation of marriage is considered, and they are also considered capable of contracting betrothals, whether absolutely or conditionally. These impediments to marriage do not consist in a stipulation. It is said, because the day does not pass immediately; those who are capable by law of contracting marriage cannot enjoy the usufruct. The reason is because those who are to be married, each of them, can have one, but not the other. What happens if he stipulates? And this is not a case of stipulation; because, from previous times, a request for suspension is made, therefore the condition is valid in pure form. What is received from the stipulation, when it is suspended under a guarantee? It is only in a simple defect of faculty. In addition, there is another suitable thing requested from the law of public order. For although it is not improper to put as a condition the generosity of some common citizen of the Prince, the law universally applies, perhaps in grace to the one requesting: it is nevertheless shameful to demand this publicly, until the urgency of a private plea compels one to obtain a gracious derogation from the law, so that the derogation of the law, graciously obtained, becomes odious coercion against the pleas. This is not by force of the dispensation granted, but by force of a promise made beforehand. Therefore, the root of the entire obligation must be sought from the time when the betrothals, although conditional, were begun. But at the time when the contracting parties entered into the betrothal, they were also unsuitable due to the impediment of those wishing to be in accordance with the law. Wherefore, it is not undeserved that conditions of this kind are considered as impossible in contracts, as, for

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example, in L 1 3 7 /f. which it is necessary that the obligation be fulfilled, therefore the condition cannot be fulfilled by law, or by the opinions of Roman jurists; let it suffice to indicate in this matter the law 26 ff. "Stipulation." This can be further illustrated, where if it is impossible to stipulate.

[*Latin ed. p. 124*]

12i [It] is inserted. It is not relevant to the matter, nor to those things concerning which dispensations are usually granted. Liberality [is] that which can be changed; and that which, for the Prince, through repeated dispensations, is impossible, afterwards can be made possible. For it does not change the nature of the contract, nor does it abrogate the law. Rather, according to present circumstances, the law is observed. Therefore, if anyone should confess that a stipulation was made under the aforementioned condition, it ought to be estimated as valid. In the case of an impediment concerning which a dispensation is difficult to grant, it does not appear to have a solid foundation, that distinction which is made by some, that the same ought not to be said concerning those impediments concerning which a dispensation is more easily granted; namely, that a dispensation is granted concerning the former, and not concerning the latter.

APPENDIX V. CONCERNING THE RIGHT OF BURIAL.

In 6, 52, it is not fitting to investigate further the statements made in the cause of the right of burial, so that it may not sort out an effect. For that impediment which arises from the law, whether it is introduced by authority, is legitimate, or illegitimate. The illegitimate is that which is introduced by reason of public health, and that which impedes solely by the will of the secular power, remaining in the churches of the city: therefore, the secular power cannot impede the placement of the corpse, nor indirectly, the deposition of corpses in sacred places. For it cannot impede the exercise of that which the faithful have by the disposition of canon law; nor can it impede the right that they enjoy concerning the burial of corpses, namely, that they may deposit them in places erected for that purpose, even if they relinquish gentile sepulchers in cemeteries outside [the city]. And indeed, the edictal law of the year 1817, published by the Holy Congregation for the Affairs of the City of Rome, and promulgated through circular letters, rightly exercises the right of the faithful, so that all corpses of the deceased should be deposited in dwellings erected for that purpose, entirely exempt from secular jurisdiction. Therefore, in this case, place is yielded to the faithful who relinquish gentile sepulchers in cemeteries outside.

[*Latin ed. p. 125*]

AN'E.Nixv . 1 2 5 possessed, yet it added to those same circular maintenance structures, Restino, the ways of acting and of receiving, then, not of emolument, "Parochial establishment, or of dining, on which to play,

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which are not intended to be, or are legitimately collected, customary enunciations for the cemetery, whether made in possession or in the proper emolument of the case; in the construction of the public [building], it responded: affirming, in all." It is translated into Latin: "What, then, can parents or heirs of the deceased do, relating to the burial or legitimate custom, concerning the choice of the coffin or funeral, in providing for burials, if the church of Alet does not intend to make any innovation?" It is taken from c. IV. de non intendit, 6. In which it is stated: "Although a father may not, before his children reach the age of puberty, choose a burial place for them (if the custom of the land allows it), wherever he wishes, he cannot do so where there is no such custom, but he must do so with his elders or in the parochial church." This was further discussed on 24 November 1821. St. Martin had ordered that the body of Veronica be taken to his own parochial church in Teglio, and the funeral was held there, before it was taken to the public cemetery, and he claimed all the emoluments due to him under the aforementioned edictal law of 1817, by which the dead could no longer be regularly buried in a family vault. However, St. Cong. C. decreed that the exposition of the body, and the funeral at the Church of St. Gregory, where there was a tomb of the deceased, should be attended, and that the emoluments for the burial, and those received by the parish priest, should be returned, as certified elsewhere. According to this law, St. C. Concilii responded in Ariminen on May 14, 1825. In the aforementioned Collegiata of May 1821, a doubt was proposed to St. Cong. C. in Cateno. In which, a father, whose son was 20 years of age, and who, neither to himself nor to the church, could grant the church the emoluments of the funeral, "Can he?"

[*Latin ed. p. 126*]

1 2 6 The cemetery of the Gentiles, which contains a church used as a burial place and not belonging to any particular parish, was obtained by the chapter and a certain doubt arose regarding it: whether the law concerning burials applied to that place. The matter was brought before the Sacred Congregation of the Council, and the following question was put: Whether a priest could legitimately perform the funeral rites in that place. The response was: "No." Furthermore, it was added: "Nor can parents or heirs, by general consent, evade the law." This sanction is based on the presumed will of the deceased, who, if he has not stipulated anything regarding his burial place, is presumed to have wished to be buried in the church.

APPENDIX VI. CONCERNING THE PRACTICE OF THE APOSTOLIC PENITENTIARY. Among the other useful functions of the Apostolic Penitentiary, it is necessary that this Tribunal be accessible to all, and that all matters pertaining to it be handled expeditiously; but whether it is a matter that must be handled personally, or as we have said, by letters, or even by agents, that is, those who personally attend the Office of the

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Apostolic Penitentiary in Rome, or directly, as is often the case, by letters, the Apostolic Penitentiary must be certain that it can provide a suitable response.

It is not the case that agents are particularly attached to this Tribunal, so that no one should interfere; however, if the necessity for a dispensation is urgent, the officials can be consulted privately, in their homes, who will receive the petitioner and direct him as to how the necessary business can be expedited.

(2) The case must be excepted where it concerns dispensations pertaining to the external forum, concerning which we will speak in due course, namely, matrimonial dispensations.

[*Latin ed. p. 127*]

ix vi. There are 127 ecclesiastical officials who remain idle; namely, those who are assigned to the pre- (for all officials of the Sacred Penitentiary must be diligent) in the task of recording, so that letters of response may be inscribed. Those who apply are to be received. Furthermore, it must be generally observed that the proper names of places are not to be written in Latin by these officials, but rather in the vernacular language, if they require a written reply, so that they may receive it free of charge. Often, the proper names of places, when rendered in Latin, sound different to the poor, and do not sound the same in the vernacular; nor is a lexicon necessary, so that the meaning of all these names may be explained. Indeed, even those who are illiterate are received, so that, as far as is fitting, their affairs may be expedited with the greatest diligence and facility. Meanwhile, all are to observe the sanctity of the oath, that whoever indicates a certain obscure village or fortress, and names the diocese or province in which those places are located, shall do so each year under this ancient formula: "I, N., ruler," (or another title according to the office held by the one taking the oath), "from this hour (that is, from the present hour and thereafter)," "I, Peter, and to the Holy Father and his successors, and obedient to the Holy See, I swear that I will faithfully exercise my canonical office," "and that, without any prompting, I will receive those who come to me," "and that I will not accept anything from them except what is due to the diocese, so that they may be able to arrange matters accordingly." Hence, it is to be ensured that letters are not rendered ineffective in the Sacred Penitentiary: secret instructions are to be written in clear characters, and other matters, as may be necessary, are to be indicated in the language, and the names of the diocese and province are to be indicated, so that nothing may be omitted, lest it provide an opportunity for equivocation. Thus, according to the most holy apostolic decrees. Regarding the manner of petitioning by letter, it is most important that letters received in Rome may be inscribed in the Sacred Penitentiary Office, or, if it pleases, letters may be sent to the

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Tribunal of the Most Eminent Penitentiary, to the Major Penitentiary.

[*Latin ed. p. 128*]

128 APPENDIX licae. If anyone were to direct these matters, it would be, but since things are otherwise, it is necessary for them to turn to some Official of the same place. Those who are distant from the Tribunal can indeed; however, in this case, their letters are subject to the Pontifical jurisdiction and are freed from this taxation by letters sent from the Pontifical jurisdiction, commonly called "galis solutioni," or commonly the "franche postali" tax; while those, on the contrary, arrive free from this burden of the jurisdiction. These matters, as far as the Pontifical jurisdiction is concerned, do not depend on whether the letters are written in Latin, for it would be desirable that the Catholic Governments should grant the same in their dominions, as they do in the use of the idiom or of the proper language of each nation.

[*Latin ed. p. 129*]

129 FROM S, CONGREGATION OF THE COUNCIL, ON THE NULLITY OF MARRIAGE. August 28, 1864. Session 24, chapter 6, concerning impediments to marriage. Summary of the case. Everything was prepared for the marriage to be contracted between Titus and Gaia, according to the law of Trent, when a certain woman, in the episcopal court, prevented the further proceeding with the celebration of the marriage, claiming "that, due to prior betrothals, joined with defloration, from which she had also borne a son, Titus was obligated to her." Therefore, a dispute arose, and the case was ultimately decided in the court regarding the existence of the betrothal. Titus left nothing untried to bring about the marriage, which was already prepared with Gaia, to its conclusion, through its celebration before the Church. However, the aforementioned woman, who steadfastly refused to yield her right to the betrothal, and the parish priests, who, having been warned by the Bishop about the impediment to the betrothal, firmly refused to assist in the marriage celebration, caused all of Titus and Gaia's efforts to be rendered futile. However, Titus, with an unbroken spirit, with the help of a following friend, the parish priest of Oppido, who was located in a high and difficult place, managed to find someone who, unaware of the impediment to the betrothal, readily offered himself to bless the desired marriage, provided that documents proving the freedom of status of both betrothed were presented to him, and a delegation from their respective parish priests. Without delay, certain documents were transmitted, which, however, only attested to the fact that no marriage had yet been contracted between Titus and Gaia. Furthermore, the delegation from the parish priest of either of the betrothed was lacking. But this deficiency in the delegation, that priest considered, could either be overlooked, or supplemented by the inscription of the betrothed in the register of the inhabitants of that place,

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of which he undertook the care of receiving. In truth, according to the civil laws of that province in which Oppido was located, it seemed that such an inscription could supply the lack of real domicile. Acts, volume I, phase III.

[*Latin ed. p. 130*]

130 OF THE NULLITY OF MARRIAGE. DEFECTS. Therefore, having received the requisites denunciations from the aforementioned Parish Priest, on a designated day, before witnesses, he blessed the marriage; and subsequently, the spouses, remaining there for scarcely an hour, left that parish, which perhaps they had never seen, or were destined to revisit. The news of the celebrated marriage reached the episcopal court, and after a preliminary inquiry, the Bishop imposed the due penalty on the Parish Priest, and declared the aforementioned marriage null. Although the decree of nullity appears to have reached the knowledge of the spouses; nevertheless, it was not authentically notified to them, except six years later, due to their ignorance of their domicile. Finally, the woman, learning that this decree could defend her freedom and allow her to marry another man, left the marital home of Titus. However, on the contrary, Titus, claiming the woman as his legitimate wife, vigorously initiated a lawsuit in the episcopal court. Thus, a regular process was begun, but the threads of justice were intercepted by a lay authority, and the case was brought before the civil court, and Titus obtained victory. But the woman, not agreeing with the sentence pronounced against her by an incompetent tribunal, brought the case before the Apostolic See, and the Most Holy Father referred the matter for a complete examination to the Sacred Congregation of the Council, with all the appropriate and necessary powers, and ordered that this decree be notified to the Ordinary, so that "he may warn Weringhof to bring his rights before the Sacred Congregation." Thus, the irregularities in the process were remedied, and a written proposal was presented by the lawyers of the parties, and the defender of the marital bond. A summary of the discussion. We will only mention the main points, which the lawyers for both sides discussed extensively in the repeated hearings. ARGUMENTS PRESENTED IN FAVOR OF THE VALIDITY OF THE MARRIAGE. — The crux of the question was whether, in this case, a delegation of the proper Parish Priest was necessary, which had not been obtained. Therefore, in favor of Titus, who vehemently defended the validity of the marriage, it was argued that, at the time of the marriage, the Council of Trent had not been promulgated in that town, and in such a case, the necessity of a delegation of the proper Parish Priest ceased. Sánchez De matrim. L 3 disp. 18 n. 28 et alii.

[*Latin ed. p. 131*]

ON THE NULLITY OF MARRIAGE. 13. It was alleged that the parties had not fulfilled the requirements of the civil laws of that province, which were enacted for the legitimate marriage of outsiders. It was indeed argued

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that the aforementioned betrothed had been registered, as the parish priest had promised, in the town register; and that this registration was sufficient for the validity of the marriage, without the delegation of the proper parish priest. But beyond this, another argument was put forward, contending that the aforementioned betrothed did not require said delegation; because the right of parochiality, or sufficient domicile within that town for contracting marriage, had been acquired by the betrothed themselves. From this, a dispute arose concerning the nature of domicile. It was argued, in favor of Titus, that domicile is acquired as soon as the will to establish it in a particular place is manifested, in order to contract marriage. It is read in Z. 31 ff. ad Municip. "For nothing prevents anyone from having a domicile wherever he wishes, provided it is not forbidden to him." From this, it was argued that the fact of habitation is not necessary; for this is required to demonstrate the will: therefore, if this will is established by other means, the fact of habitation is considered superfluous. To demonstrate this doctrine, certain authorities were cited, namely Olivae de for. eccles, p. 3 q. 18 v. 5; Ursayae tom. 7 p. 2 discep. 25 n. 32, etc., and especially the authority of the Sacred Congregation of the Council in the case of Caesena, or Forlivia, discussed on February 20 and June 25, 1723, in which the Sacred Congregation held that the marriage was valid, although, as Ursaya states in the cited passage, n. 42, all the circumstances were present which clearly demonstrated the intention to deceive the proper parish priest. In summary, the man (who was arguing for the nullity of the marriage) presented evidence that the betrothed had left with the intention of returning to Caesena, their homeland, immediately after the marriage was celebrated, and that it was not their intention to remain in Forlivia, but that they intended to return to Caesena after a few days. The woman declared that she was returning to her own home in Caesena, where she had left her mother and sister, etc." (i). (i) Do not be deceived by this cited authority, as if the Sacred Congregation had judged that at least a quasi-domicile is not required to validly contract marriage outside the parish.

[*Latin ed. p. 132*]

132. NULLITY OF MARRIAGE. Therefore, when the parties, in the case before us, have demonstrated their intention to acquire the right of parochial belonging in the aforementioned town, through inscription in the town register, it follows that it is of no consequence whether they resided there before the marriage, and that they immediately departed from the town after the celebration of the marriage. Especially since the intention of the Council of Trent, which introduced the impediment of clandestine marriages, was to prevent the frauds that arose daily from the secret celebration of marriages, since the foreign parish priest could not be aware of the impediments. Barbosa, vol. decis. 19, no. 25. Therefore, it was concluded that it suffices that the parish priest knows the parties,

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and it is not necessarily required that the parties reside in the place where they are married. In the present case, not only does the town parish priest know the parties, since they did not contract secretly, but indeed, the entire matter of celebrating the marriage was entrusted to the parish priest himself. Furthermore, it was not asserted that this marriage was invalid by the Constitution of Benedict XIV. A few things follow from this. In it, although a certain rule is established regarding a residence of at least one month in order to validly contract marriage in a new parish, this period of one month is not to be understood in a prescriptive sense, but entirely in a presumptive sense, so that you should note: if a residence of one month presupposes belonging to the parish, especially when there is no delegation from the proper parish priest, Ursaya used this as an example to help his case in that discussion, and since he only mentioned this incidentally, it was sufficient for him to achieve his purpose, he did not refer to everything. 2. Note that although the number of days the parties remained in Forlivi is ignored, there was, in fact, a longer period of residence, and then, after the celebration of the marriage. 3. Note that the woman went to Forlivi because her maternal grandmother resided in that city, whom she called her guardian and caretaker, and she went to stay with her in order to escape the annoyances of her parents, and before witnesses, under oath, she declared that she had come to Forlivi in order to establish a domicile there, protesting that she intended to live in the future under the protection and care of her maternal grandmother. And regarding this particular circumstance, in which she went to the house of her maternal grandmother, Ursaya himself states in the aforementioned passage: "innumerable witnesses... unanimously attributed validity to the aforementioned marriage, to that circumstance, that the woman arrived in the city of Forlivi in the house of her grandmother, who had also been her guardian, and the parochial right and subjection to the parish priest of Forlivi were immediately established." Regarding this matter, Benedict XIV, who at that time held the office of Secretary at the Sacred Congregation, is also to be consulted, who briefly mentions this question in the Constitution "Paucis ab hinc" and in Institution 33, of which we will speak further in our discussion in favor of Caia.

[*Latin ed. p. 133*]

NULLITY OF MARRIAGE. 133. The intention of establishing a domicile is essential. Therefore, it must be ascertained whether such an intention existed; otherwise, the marriage is invalid. Conversely, a mere lapse of time is not sufficient proof of such an intention, unless it is demonstrated that the intention existed. Examples were cited by the Sacred Congregation, as reported by Fagnanus in chapter 37 and following. In one case, a man and woman from Traiectenses, fearing an impediment from their parents, went to the nearby city of Aquisgrana, where they stayed for some time,

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and contracted marriage. The Sacred Congregation, consulted regarding the validity of the marriage, determined that the time during which the couple resided in Aquisgrana should be examined. It was argued that if the couple had resided there for at least one month, a decision regarding the validity of the marriage could be made; otherwise, the matter should be referred anew to the Congregation. Furthermore, it was contended that the alleged fraud, whereby the couple had chosen a different parish as their domicile in order to avoid the impediment, did not invalidate the marriage, since everyone is permitted to reside where they please. (Ursaya, loc. cit.). Finally, it was added that even if the aforementioned spouses had not acquired the right of parochiality in that town, the marriage should not be declared invalid. An example was cited: Titus had abandoned his domicile in originis for several years, and had acquired no other domicile, not even after the marriage. Therefore, he could contract marriage before any parish priest in the world. With these and other arguments, Titus's defenders invoked the possibility of a healing of the marriage at its root, should the Sacred Congregation decide to declare the marriage null. Regarding this, see Appendix VI. DEFENSE OF THE WOMAN, AGAINST THE NULLITY OF THE MARRIAGE. — Much more serious reasons for the nullity of the marriage were presented by the defenders of the woman. First of all, they cited the decree of the Council of Tridentini, session 24, chapter 6, on the Reform of Matrimony, which states: "Those who attempt to contract marriage otherwise than in the presence of the parish priest, or another priest with the license of the parish priest or Ordinary, and with two or three witnesses, the Holy Synod declares to be entirely incapable of contracting such a marriage, and declares such contracts to be invalid and null..." It is understood that the parish priest must be the parish priest of either of the spouses, as has been stated repeatedly.

[*Latin ed. p. 134*]

134. The Most Holy See has declared the nullity of a marriage, adding that it is the proper duty of the parish priest to ensure that, for a marriage to be validly contracted, one of the parties must have a domicile in the parish, unless neither party has a domicile, that is, if one is a vagrant; but this extreme case does not appear to be verified in the present instance. It was shown, first, that neither of the parties had established a domicile in the aforementioned town, according to the very notion of domicile. For this does not consist solely in the choice of the mind, but in the mind and the act, as is stated in *ad municipia*, § 20 ff. – there – «Domicile is transferred by fact and deed, not by mere assertion.» And Reiffenstuel, among others, teaches in canon I, 2, title 2, § 2, no. 17: «True domicile is not established by mere will and assertion, but by the mind and act together.» Furthermore, the distinction between domicile and quasi-domicile lies in the fact that the former, in addition to the fact of habitation, requires the intention of

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permanently residing there; whereas the latter only requires the intention of residing there for a long time, as Zallinger teaches in *Institutiones Ecclesiasticae*, I, 1, title 2, § 148. It was also noted that quasi-domicile can indeed be acquired immediately, as soon as the parties present themselves in a certain place with the intention of contracting marriage, but this only applies if the parties truly begin to reside there for at least a few days, and there is no doubt about the intention of residing there for a longer period (Reiffenstuel, *lib. A*, title 3, § 2, no. 60; Barbosa, *De officio et potestate parochi*, part 2, chapter 2, 1; Sánchez, and others). And the Sacred Rota declared in *Matrimonia*, December 10, 1625, before Merlino: "It is not sufficient for someone to become a parishioner in order to validly contract marriage, merely by beginning to reside in a place, etc." "Because this conclusion follows," when "with the habitation, there is a declaration of the intention to reside there, either through an explicit declaration or through conjectures, etc." (Decision 451, before Dunozzetto). Therefore, if this intention of establishing a domicile is not present, a temporary stay or habitation is not sufficient, as the Holy Congregation declared in *Abulensis*, December 1, 1640: "A marriage contracted before a parish priest in a place where the contracting parties are found is not valid, if they do not intend to establish a domicile there" (*lib. 16 decret*, page A10, and others). Consequently, due to this defect of will, the marriage is not validly contracted in a place of temporary stay, for simple custody, or in a place of recreation, or of rural residence, from which one will soon depart.

[*Latin ed. p. 135*]

NULLITY OF MARRIAGE. i 35 It is necessary to return to the true domicile. Benedict XIV, Institutes, 33, sections 7 and 12. The intention of remaining in the place of the new residence is sometimes expressed, as was the case alleged in favor of Titus in Caesenate, or Forolivio, on February 22, 1623. Speaking of this, Benedict XIV, in Institutes, 33, section 9, says: "It was proven to be valid that a marriage, although contracted by two inhabitants of Caena, who, in order to escape the annoyances of their parents, celebrated it in Forolivio, when the girl, before leaving, had openly declared that she chose to reside in that city, where her maternal grandmother lived, whom she called her guardian and caretaker." And speaking of the "same case," the same Benedict, in the Constitution *Paucis ab hinc*, says: "The Congregation considered valid the marriage contracted by him who had departed from the place of his domicile in order to avoid difficulties that would have arisen if he had entered into marriage before the parish priest of that same place; and he entered into marriage before the parish priest of another place, after having, however, legitimately acquired there a quasi-domicile, and remained in that same place for some time after the marriage was contracted." Sometimes, this intention is made manifest by the very act by which one is transferred from one place to another, namely, if

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one completely abandons the former domicile, and transfers all of one's possessions and family to another parish, as is also stated in the Statute of the Roman Clergy, chapter 3, section 1, and as Ursaya teaches, volume 2, page 1, discussion 10, etc. Indeed, the very fact of residing in a place for a period of months implies this intention, and this is considered sufficient for a valid marriage, as stated in the Constitution *Paucis ab hinc*. Furthermore, having explained this doctrine, it was observed in the case of the aforementioned betrothed that they had in no way established any domicile in the aforementioned parish, nor did they reside there, but remained there for barely an hour, solely in order to contract the marriage. It cannot be objected that the aforementioned betrothed observed the mind of the Council of Trent. For, he who is only concerned with the end of the law, and despises the precepts which the legislator commands to be observed, does not satisfy the law. Therefore, it was added that the Holy Congregation has constantly defined that marriages contracted in this manner are invalid, and a special declaration of this doctrine was made on February 22, 1631, which...

[*Latin ed. p. 136*]

1 3 6 OF THE NULLITY OF MARRIAGE. Urban VIII confirmed this. Indeed, "Sacra [Congregatio] decreed that the following declaration should be given in abstract: a man and a woman, departing from the place of their habitation without the intention of abandoning it, and going to the parish of another place solely with the intention of celebrating marriage there, and not of establishing a domicile, having entered into marriage before the parish priest of that place." It was requested that the Holy Congregation declare whether such a marriage is null or valid. The Holy Congregation, according to what is presented, judged it to be null. It was shown, however, that Titus could not be called a "vagus" [one without a fixed abode] because the conditions necessary for anyone to be considered a "vagus" were lacking. Ulpian, in leg. 27 ff. ad Municipal., stating that it is difficult for anyone to be without a domicile, adds: "I also think that this can happen, if someone, having abandoned his domicile, sets sail, or travels, seeking where he may find lodging, and where he may settle: for I consider him to be without a domicile," to which the authors of doctrine generally agree. Furthermore, it was added that although Titus had resided in various places in the manner of nobles, it could not be verified that the aforementioned conditions were met, namely, that he had abandoned his proper domicile, and that he had not established a new one, but was still seeking one. In fact, it seemed sufficiently established that Titus had at least a quasi-domicile, or a marriage, with his brother. Regarding the inscription in the town register, it was observed that, although this inscription had been made (of which there was not sufficient evidence in the case), it alone could never constitute that domicile which is prescribed by

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canon law for the proper celebration of marriage. Whatever the civil laws may have determined regarding the value of this inscription in relation to contracting marriage, such laws could not override those which the Church requires to be observed under penalty of nullity. Furthermore, with valid conjectures, and without any doubt, it was noted that, even if it was not established that this publication had been made in the town, since it was constantly observed that this Decree was followed there as the Decree of the Council of Trent, it should be presumed that this publication had taken place. Instruction of Pius VI to the Bishop of Lucena, May 28, 1793. In this, it is read: "Where the Decree has been otherwise observed, publication is presumed."

[*Latin ed. p. 137*]

NULLITY OF MARRIAGE. 13.7 i> at the time when, in the parish, the Decree of the Council was observed. This very thing had already been defined by the Sacred Congregation of the Council. And if, by hypothesis, it were even conceded that such a publication had not been made in the parish in question, since the aforementioned betrothed had not established any domicile therein, they would, in the same way, have contracted [a marriage] invalidly. Indeed, Urbanus VIII, on the fifteenth day of August, 1627, confirmed these resolutions of the Sacred Congregation of the Council, namely, concerning the following questions: "I. Can those inhabitants, both male and female, of the place where the Council of Trent was promulgated, who are passing through a place where said Council was not promulgated, while retaining the same domicile, validly contract marriage in that place, without a priest and witnesses? II. What if said inhabitants, both male and female, should, with only their intention, transfer themselves to contract marriage, without a priest and witnesses, without changing their domicile...?" The same Cardinals answered to I and II that it would not be a legitimate marriage between those who thus transfer themselves and those who are passing through, with fraud. Benedict XIV, *Institutiones ecclesiasticae*, 3 & n. 9, and in the letter to the Archbishop of Goa, March 17, 1758. Question: "Does the nullity of marriage exist in this case?" RESOLUTION OF THE QUESTION.— After the cause had been proposed several times at the request of a man and discussed, the Sacred Congregation of the Council consistently judged that the marriage was null; and finally, after the question was raised again under the formula: "Is it necessary to adhere to or to depart from the decisions in this case?" the Sacred Congregation, on August 28, 1864, responded: "Adhere to the decisions, and so decide." From ALL THESE CAREFUL CONSIDERATIONS, YOU CAN GATHER THE FOLLOWING: I. A marriage contracted before a proper priest, without any delegation, in places where the Council of Trent was promulgated, is invalid, although this priest fulfills all the prescribed formalities. II. A marriage thus contracted, even if begun in good faith concerning its va-

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lidity, remains invalid, and cannot be validated by a long and peaceful cohabitation of the spouses. III. A priest is considered proper in whose parish either of the betrothed has at least a quasi-domicile, and this...

[*Latin ed. p. 138*]

138. OF THE NULLITY OF MARRIAGE. A domicile cannot be supplied merely by a formal registration among the inhabitants of a place, whatever the civil laws may prescribe regarding this matter. IV. Nor is a quasi-domicile established solely by will, but, beyond the will to remain for a long time, an actual dwelling must be established. V. This actual dwelling, in order to effect the contracting of marriage, must persist for a month, and nothing serious must be opposed to it; otherwise, a quasi-domicile is presumed to have been acquired. VI. Indeed, even if the dwelling has not lasted for a month, if a true and determined will to establish a new domicile can be demonstrated from various circumstances accompanying the new residence, the domicile is also considered to have been established. VII. Therefore, those who validly contract marriage are those who, for the purpose of avoiding inconveniences, move from one parish to another, provided that they have first established at least a quasi-domicile in this new parish, and then celebrate the marriage. VIII. On the other hand, those who validly contract marriage are not those who, solely with the intention of deceiving their own parish, move from one parish to another without establishing at least a quasi-domicile there. IX. And this is also verified in the case in which the betrothed, coming from their own parish, which is subject to Tridentine laws, move to another parish, not subject to those laws, and contract marriage there, without having acquired any domicile. X. However, this quasi-domicile is not required for betrothed whose one of them has no domicile, that is, who is a vagrant. XI. Nevertheless, a vagrant is not one who, in the manner of nobles, resides now in one place, now in another, while retaining a quasi-domicile elsewhere, unless, perhaps, he has not established a new domicile in the places where he dwells. (i) I said, provided that nothing serious is opposed; for if someone remains in a place for a month, solely with the intention, for example, of recreation, or is compelled to live in a house, for the sake of custody, etc., he is not considered to have established a domicile, for the purpose of which we are speaking. On this matter, see Benedict XIV in the celebrated *Institutiones*, 33, and in the Constitution *Paucis*.

[*Latin ed. p. 139*]

139. SERVICES OF THE CHOIR. August 9, 1862. Session 24, item 13, concerning Reforms. The Chapter of the Cathedral sent a letter to the Sacred Congregation of Rites, in which it lamented the conduct of Canon Dean N.; that he almost never attended the choir; that he had illegally felled trees on the lands of his benefice. Furthermore, it stated that it had presented

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similar complaints to the Ordinary on several occasions, but without result; therefore, it requested that the Sacred Congregation provide a suitable remedy for these abuses. The Sacred Congregation, in accordance with its practice, wrote to the Vicarius capitularis (since the episcopal see was vacant) for information and a vote, and instructed him to report, after having read the documents presented by both the Chapter and Dean N., especially concerning the alleged felling of trees. We omit what was reported by the Vicarius capitularis concerning the felling of trees, since this question was not formally resolved. Regarding the Dean's absence from the choir, the Vicarius capitularis reported that Dean N. was habitually absent from the choir, which caused prejudice to the Church; that he was often seen walking about during the hours of divine service, and that he frequently attended Mass at a certain church not far from the Cathedral. He added that, when Dean N. was a simple Canon, he had obtained, based on a medical certificate regarding his infirmity, a coadjutor canon, in anticipation of his absence from the choir service; but that, when the prebend of Dean became vacant, he had sought and obtained it through legal means, and therefore the burden of the choir service was again placed upon him. These facts are not dissimilar to those presented by the Chapter to the Sacred Congregation, which stated that the habitual absence of Canon Dean N. from the choir, especially on solemn days, had been discovered through records. Dean N. himself sent letters to the Most Reverend Prefect of the Sacred Congregation, in which he admitted his absence from the choir, but he adduced a reason; namely, that he suffered from a chronic liver ailment and nervous disorders, so that it often happened that he was unable to celebrate Mass. He added that he had consistently paid his dues, and that he would gladly frequent the choir among his colleagues if he regained his former health.

[*Latin ed. p. 140*]

REGARDING THE CHORAL SERVICE. After these matters, one of the Canons presented a written statement, declaring that he knew the habitual state of health of Canon N., whose former way of life he praised, and testified that, to his knowledge, Canon N. had not left his own house for entire weeks and months. And, having taken up this defense, the Chapter finally refuted this, as if it did not concern the Chapter to inquire about this matter against the Canon. Regarding these matters, the Chapter was again heard, which responded that it had never seen any document proving the asserted infirmity; nor were there reasons lacking that would suggest that the asserted infirmities were not of great importance, since Dean N. often wandered about the city, and attended Mass at a church not far from the Cathedral; and yet, in that very year, from the first day of January until the fifth day of May, when this Chapter was writing, Dean N. had not attended the choir at all. Furthermore, from the established facts, it was

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entirely clear that the distributions were very meager in comparison to the revenues. For, from his endowments and revenues, the Dean received 350 scudi annually, and paid only 40 scudi annually, merely for the title of Canon. Hence, it was observed that the distributions did not reach even a third of the revenues and endowments, contrary to the prescription of the Council of Trent, Session 22, Chapter 3, on Reform. Therefore, according to the practice of the Holy See, in which Bishops are ordered to ensure that the decree of the Council is fulfilled, another question was added on this matter, with two points below. A synopsis of the discussion. It was noted that, from the established facts, it could not be doubted that the aforementioned Canon Dean was absent from the choral service for a large part of the year; indeed, in recent times, and especially in the year in which the question was being considered, he was completely absent, since from the first day of January until the fifth day of May, he had not been present at the choir even once. Regarding this matter, neither the Dean himself nor any other Canon presented anything to the contrary; but what they had responded concerned only the causes of his absence and excuses. It seemed that there was a legitimate reason for the Dean's absence from the choir at the time when the Dean had obtained a coadjutor as a simple Canon.

[*Latin ed. p. 141*]

SERVICES OF THE CHOIR. It was testified by the Vicarius capitulari that the reason for the recognized infirmity was legitimate, according to the physician's testimony. Furthermore, no negligence in the choral service could be imputed to him from September 5, 1857, to May 31, 1860, during which time he, as coadjutor, was obligated to serve the choir. However, from the day he assumed the Decanate as coadjutor, the reasons and excuses for his absence from the choral service did not appear to be of equal value. No document was presented that would prove the existence of a serious illness; indeed, there were serious indications to the contrary, which, if they did not exclude the existence of any infirmity, at least seemed to exclude its severity and duration. Moreover, it is added that a benefit is granted for the sake of office, according to chapter 6 of the decree concerning rescripts, and therefore all Canons are obligated to serve the choir, according to chapter 6 of the decree concerning non-resident clerics, session 24, chapter 11 of the Council of Trent, concerning reforms. If clerics do not fulfill this obligation, whether by not being present when the choir sings, or, which is more serious, by not residing there, they are subject to penalties, as established by the Sacred Canons concerning such negligence and obstinacy. Indeed, besides the loss of distribution, anyone absent for more than three months is to be deprived of half of the fruits, which he has obtained through his prebend and residence; and if he again uses such negligence, he is to be deprived of all the fruits of that year; and if he persists in his obstinacy, proceedings must be taken against him according to the

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constitutions of the Holy Canons, as cited from the Council of Trent, so that he may be deprived even of his benefit, or prebend. Giraldi, in part. pr., book 3, Decretal, to chapter 11. This applies to those who do not reside. However, it is added that, with regard to residence, as noted by Fagnanus in chapter 4, volume 2, concerning non-resident clerics, and in chapter 23 concerning prebends, there is nothing other than serving in divine offices, and, according to Heiffenst., in book 3, title 4, number 1, one is said to reside who almost continuously remains in the place of his benefice, for the purpose of personally performing ecclesiastical office or service; hence, as the same Reiffenst. states in the aforementioned place, number 3, if a cleric is indeed present in the place of his benefice, but never performs his office, he is not considered to reside; or, as Barbosa states in the rubric concerning non-resident clerics, number 5, such a Canon is said to reside only materially, but not formally, if he does not remain in the place of his benefice.

[*Latin ed. p. 142*]

142 SERVICES OF THE CHOIR. This, with effect, that is, with the exercise of the personal duty to which the residence is ordered. Nor did the Holy Congregation of the Council judge otherwise, as can be seen in a document of February 1, 1766. And in the year 1573, in response to a doubt proposed by the Bishop of Modena, whether those who were absent should be considered absent who were not absent from the church or city, but from the service of the church for so many times that it exceeded a period of three months, it was answered: "These are to be considered as absent," lib. i, Decret, p. 178. Benedict XIV, Instit. 107 §. 6, n. 32, who furthermore, from another response given by the Holy Congregation to the same Bishop of Modena in the same year, 1573, declared that it was not necessary for the absence to be a continuous absence of three months, but it was sufficient that the days of absence, although interrupted, exceeded the quarter. Nor was it otherwise resolved, as we read in a document of November 29, 1853, in Terracina. In which case, a Canon was refusing to participate in the choir because he was unwilling to wear the biretta granted by Pope Gregory XVI. And because of this absence, the Bishop had decreed the deprivation of half of the revenues; the case then came before the Holy Congregation with the following doubts: "I. Whether the Episcopal decrees are valid in this case." "II. Whether and how to proceed against the same Canon in this case." The response was: to II, affirmatively. To III, provision was made in the second. And again, on March 31, 1860, the Holy Congregation stood by its previous decisions. Doubts: I. "Whether there exists a legitimate reason for the Dean's absence from the service of the choir in this case?" "And to what extent, negatively." II. "Whether the Dean should be considered absent from the service of the choir, so that proceedings can be taken against him according to the form of the Council of Trent against non-residents."

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III. "Whether and how to provide for the future regarding the amount of fines or distributions to be paid by the Dignitaries and Canons of the Cathedral Chapter in this case." RESOLUTION OF THE DOUBTS. The Holy Congregation of the Council, on August 9, 1862, responded as follows: to I, negatively. To II, affirmatively. To III, it was deferred, and the capitular vicar, after hearing the Chapter, should report why not.

[*Latin ed. p. 143*]

CHORAL SERVICE. Paragraphs 4-3: The regulations prescribed by the Holy Council of Trent and by the Holy Congregation regarding choral duties and absences shall be observed. From these, the following may be understood: I. A Canon is considered absent in such matters if he does not participate in choral service, whether he resides in the same city as the church or is located far away. II. A Canon is considered absent even if he fulfills his choral duties only occasionally. III. Therefore, "if, for more than three months, whether continuously or interrupted within a year, he does not fulfill his choral duty, unless he clearly demonstrates a legitimate reason for absence, in addition to the loss of distribution proportionate to the absence, he may successively be deprived of the fruits of the benefice, according to the decree of Trent."

RESIDENCY AND DEPRIVATION OF FRUITS. June 6, 1863. Session 24, chapter 12, concerning reform. Summary of the case. Canon A. having used three months of vacation, had come to Rome for three successive years to care for his health. However, since a longer stay in the city was deemed necessary by a medical expert, he petitioned the Holy Congregation. On August 2, 1859, he obtained permission for absence from the date of his departure until the entire month of September of the following year, which permission was subsequently extended for another six months. After six months had elapsed, a request was made for a further extension, but the Bishop, recalling him to the diocese and to choral service, a decree was issued by the Holy Congregation on June 16, 1860, granting him what he had requested. However, the Canon did not entirely lose hope: he then presented a new petition to the Most Blessed Father, in which he requested a period of time to deliberate whether it would be more advantageous for him to renounce the canonical prebend, or rather, to return to his city. But on September 28, 1860, a response...

[*Latin ed. p. 144*]

44. REGULAR. AND PRIVATE. FRUITS. obtained - Report - (1). Whereas the aforementioned Canon did persevere in his absence, the Chapter, at the episcopal curia, convened on May 29, 1861, to deprive him of all, or half, of the fruits of his canonry, according to the dispositions of the Council of Trent, etc. The episcopal curia issued a favorable opinion to the Chapter, by which it was decreed that the defendant should remain

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deprived of half of the fruits of his canonry. The Canon appealed from this decision to the Sacred Congregation of Councils, which, according to custom, requested the Bishop for information and his opinion. In the Bishop's response, two points were clearly distinguished: namely, the merits of the case, and the form of procedure. Regarding the merits of the case, it was stated that, from the facts and the records, Canon A. had been absent from the choir for a year, and that there was a clear disposition of the Council of Trent by which a Canon who is not resident for the first year is deprived of half of the fruits [of his benefice], especially since Canon A. had not presented any dilatory or peremptory exception. Regarding the form, it was noted in the same part of the response that, according to the resolution of the Sacred Congregation of Councils in the case of Vercelli, reported by Benedict XIV in *Inst.* 107, n. 37, a Canon who is absent in this manner must be cited in order to allege a reason why he should not be deprived of the fruits of his benefice, according to the decree of the Council. But, furthermore, since Canon A. had been cited or summoned to appear in court to hear the decree regarding the deprivation of half of the fruits, unless he presented a legitimate and just reason for his absence, and he was contumacious; these judicial forms, it was asserted, did not apply in the present case. Indeed, two negative responses had been given by the Sacred Congregation of Councils to the requests of Canon A., in which the legitimacy of his absence from the choir was questioned. Especially since we are not dealing with a deprivation of the benefice itself, in which the prescribed judicial forms are strictly and under penalty of nullity to be observed, but only with a deprivation of the first fruits. This was from the Bishop's response. Therefore, the case was presented to the Sacred Congregation with the question in doubt, as written below, namely, whether the Bishop's decision should be confirmed or rejected. (i) When a supplication presented to the Holy Father has no effect, the response given by the style of the curia is - report - by which it is indicated that the petition was indeed presented to the Holy Father, but that the prayers did not merit to be heard.

[*Latin ed. p. 145*]

RESIDENT. AND PRIVATE FRUITS. 145. A SYOPTIC DISCUSSION. DEFENSE OF THE ABSENT CANON. Both the Canon A and the Chapter appointed a defender in the City to plead this case. The defender of the Canon argued first that no deprivation of fruits should be decreed by the Bishop, because the prescribed forms had not been observed, which cannot be omitted. He observed that the penalty of deprivation is not to be imposed, but to be decreed, as appears from the very word "deprive" used in the decree of the Council of Trent, Session 24, chapter 12, concerning those who hold canonical dignities: "...it is not permitted for anyone to be absent from those churches for more than three months in any year...

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Otherwise, in the first year, each one shall be deprived of half of the fruits." Furthermore, he maintained that every penalty that is to be imposed by a judicial sentence must necessarily carry with it a prefixed term, so that the accused may present a just cause to the judge to avoid the penalty, and in the matter at hand, a citation was required to delegate the cause within a term, why the absent Canon should not be punished according to this decree of Trent; as has been decided, as Garzias reports in *De Beneficiis*, page 3, chapter 2, number 152. Hence, Monacellio, in the *Supplementum Formularum Ecclesiae*, volume 2, title 13, transmits the following formula of citation in such judgments: "Let N. Canon of our Cathedral or Collegiate Church be cited and warned to present, within the term, a reason why, due to his absence, he should not be punished according to the decree of the Council of Trent, etc. At the instance of the Fiscal Promoter." However, he continued, such a form was entirely neglected in this case, and therefore, he concluded that there was no valid deprivation of fruits, based on the authority of De Nigris, *De Vacatione Beneficiorum*, book 2, number 37. Furthermore, Pius IV, in the Constitution *In Principis*, 109, in the *Bullarium Magnum*, states that the form provided by the Council of Trent cannot be omitted. Moreover, the defender argued that, since the Fiscal Promoter was not acting against Canon A, but the Chapter itself, this action against the absent Canon did not belong to the Chapter. In fact, according to the Decretals, it was granted to a single Bishop the right to recall Canons to residence, and to punish those who are contumacious, as is indicated by the texts in chapter 5 concerning non-resident clerics, and in chapters 10 and following. The Council of Trent, however, affirmed this in Act 4, volume 2, Session 3, number 10.

[*Latin ed. p. 146*]

146 RESIDENT. AND PRIVATE. The law did not change, but only determined the period of absence, after which the Canon should be punished. Hence, Barbosa, *De Potestate Episcopi*, allegation 5, 3; Ugulin, *De Officio Episcopi*, chapter 1, 2; and De Nigri, in the aforementioned place, chapter 6, number 45, state that a contumacious [person] should not be deprived of his benefice by the Vicar General, but by the Bishop alone. Therefore, they concluded that it was the duty of the Promoter Fiscalis alone to cite the absent [person] and seek his punishment. Since the fruits lost due to the absence must be used for pious purposes, as taught by Pax Jordanus, book 10, title 40, number 105; Garzia, in the aforementioned place, number 105; Novar, *De Officiis Non Residentium*, council 3, and others. This, indeed, was presented prejudicially. Then, arguing for the merit of the case, the Defender maintained that the Defendant had not lacked a legitimate reason for being absent. For, in the year 1848, a physician, B, had already testified that the Canon was suffering from a rheumatic disease, for which he had been ordered not to expose himself to inclement weather and forced

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singing. In the year 1859, Physician C reported that the Canon had been afflicted with a herpetic disease and other ailments, for which reason he recommended that the Canon remain in Rome. Another physician confirmed this in 1860. Furthermore, two other experts in the year 1861 judged that a stay in the City was necessary for the Canon, so that his condition would not worsen. Moreover, the Advocate added, it cannot be objected that the Bishop doubted the severity of the illness, since the Canon was seen walking and acting in the City, whereas the very rubric of the text in the Decretals concerning the sick and infirm speaks of both, and under the same title, chapter 1, it is stated: "Among those who serve in the Church, various things often happen; infirmity occurs." Therefore, he concluded, there was a true and serious infirmity in this case, which caused the absence from his own church.

DEFENSE OF THE CHAPTER. The Defender of the Chapter argued that, contrary to the law of Trent, from the aforementioned chapter 12, session 24, on Reform, and while conceding that the penalty there established was not a matter of opinion but of law, there was no legitimate reason for the absence. For, in order to avoid the penalty established in this decree, it was necessary, he said, to have both a just and necessary reason, and the permission of the Superior; so that if either were lacking, even if there was an excuse for leaving his residence, he should be considered to have absconded, as stated by Cardinal Petru, title 3, number 7; Fagnanus, *De Officis Non Residentium*, chapter Relatum, number 10, and others. However, he added, from April 1, 1860, when the indulgence granted by the Sacred Congregation ceased, until the day of the current lawsuit, no...

[*Latin ed. p. 147*]

RESIDENT. AND PRIVATE. FH-CONTROLLED. 147 items were lacking, namely any legitimate permission from the Superior, but there was also the explicit will of the Bishop, recalling the Canon to his residence. Furthermore, there was no legitimate reason for absence, since those reasons which were put forward by Canon A had already been rejected, once and again, by the Sacred Congregation of the Council. Those reasons which Canon A might subsequently present were devoid of credibility, being, as they were, contrived opportunities sought in the heat of the dispute. The Advocate did not fail to point out that, while any infirmity might be considered a legitimate reason for absence, it was a grave infirmity, as required by Benedict XIV, *Instit. 107, c. 8, n. 47*. Passerin, *ad cap. de Cleric. non resid. conci. 5, n. 9*. Moneta, Giraldi, and others. And for this reason, it is prescribed that the reason for absence must first be known and approved by the Superior, as taught by the Rota in decision 608, n. 4, page 1, recent. And it is not required, he continued, that the absent party be warned to return and reside, as if the absent party could not be punished unless he is put in default. Giraldi, *de poenis eccles.*, page 2, chapter 3, n. 4. Ferraris, *Bibliot.

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Can.*, verb *Canonici*, article 5, n. 18. Benedict XIV, *in Instit. eccles.*, 107, n. 37, who reports that in the year 1573, the Sacred Congregation of the Council was asked, "whether such contumacious and absent parties should first be warned to reside before being punished..." and the Sacred Congregation decided that they should not be warned or summoned to reside...

Regarding what was said to the contrary, about the Chapter not having the right to take action against an absent Canon, he refuted this, stating that the texts cited were not applicable to the matter, because they dealt with the deprivation of benefits, not the deprivation of fruits. And therefore, what was established there could not be extended to the deprivation of fruits. Furthermore, he continued, all those who, either by law or by convention, have a right to something, can take action in court. But the fruits which were to be deprived from Canon A were to be ceded to the benefit of the Chapter. Therefore, the right of the Chapter to take action against the absent Canon could not be denied in the present case. Regarding the form, which was said to have been neglected, the Defender pointed out that the form used was equivalent. For the Chapter had summoned the absent Canon to court in order to deprive him of all, or half, of the fruits, according to the disposition of the Council of Trent. He maintained that this summons was equivalent to that expressed in the words mentioned above, namely, to bring forward...

[*Latin ed. p. 148*]

1. RESIDENTIA. ET PRIVATA FRUCTU. In terminum causae, quaeritur, cur, propter absentiam suam a residentia, non debeat puniri. Dubium. "An sententia Curiae Episcopalis sit confirmanda, vel infirmanda in casu." SOLUTIO DUBII. —Sacra Congregatio Concilii, re discussa die 6 Iunii 1863, censuit confirmandam esse sententiam Episcopi respondendo: Affirmative ad primam partem, negative ad secundam. Ex SUPRA DISPUTATIS COLLIGIS: I. Decurso trium mensium spatio, si Canonicus ulterius a choro absit, citari a Curia eumdem posse ad allegandam in termino causam, quare non debeat fructibus privari, etc. II. Neque esse necessarium ut Canonicus absens moneatur, vel citetur ad residendum, ac si non possit puniri nisi constituatur in mora. Probata enim absentia, militat adversus eum iuris praesumptio, qua censetur illegitime a choro abfuisse. III. Quare onus in talem absentem incumbit, destruendi per allegationem et probationem legitimae causae, hanc iuris praesumptionem, si nolit fructibus privari. IV. In praesenti autem causa supradictas judiciales formas, licet non in terminis, saltem aequivalenter observatas fuisse. Neque admodum iis insistendum videbatur, post preces ita grato a Sancta Sede reiectas.

[*Latin ed. p. 149*]

149 CONCERNING THE CHAPEL AND ITS SACRED VESSELS. May

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28, 1864. Session 21, chapter 7 concerning Reforms. Summary of the case. Titius had established a trust in his will in favor of the eldest son of the family A., imposing, among other things, this provision: that the "hereditary property of the chapel of the Most Holy Conception, existing in a certain church of the Regular [Canons]," should be embellished, and if necessary, rebuilt, with the sum of twenty thousand scudi deducted from the hereditary assets, adding that "this sum could also be spent on sacred vessels, for the use of the aforementioned chapel, whenever the heir deems it advisable." The testamentary executors (who, for twelve years, had also been appointed as administrators to increase the hereditary assets from the revenues) therefore, according to Titius's will, requested the aforementioned Regular Canons to grant, in perpetuity, to the aforementioned heir the patronage of the said chapel, with all the rights and privileges pertaining to patrons, according to the prescriptions of Holy Canon Law and legitimate custom. This request was favorably received by the Religious, and, for the same purpose, an Apostolic Beneplacitum was obtained (1) by which "His Holiness benignly approves and therefore orders the Reverend Minister General of the Order to grant, if the facts narrated are true, the requested permission at his discretion and conscience, so that the Patron may be bound to maintain the aforementioned chapel according to the prescriptions of Holy Canon Law." With this permission obtained, the Regular Canons granted the hereditary heirs the patronage in perpetuity, along with the right of a family tomb in the same chapel. Therefore, the testamentary executors immediately set about restoring the chapel; but upon completion of the work, since the entire sum of 20,000 scudi had been used for the project, they believed that the aforementioned heir...

(1) When a church or chapel is free, the granting of patronage is subject to the free will of the owner, as it were, and this constitutes a certain form of alienation; therefore, the authority of the Holy Pontiff is required. Even more so, in the case presented, since the subjection and servitude were being established in favor of laypersons. Chapter 2, concerning ecclesiastical matters, not alienations, in 6 and Decis, Rot. 318, numbers 8 and 9, part 2; see also the authors cited there.

[*Latin ed. p. 150*]

150. CONCERNING CHAPELS AND SACRED VESSELS. The inheritance is not bound to provide for sacred vessels: to which opinion the Regulars objected, and the following question was proposed to the Sacred Congregation. A synopsis of the discussion. DEFENSE OF THE PATRON. The executors of the will, acting in favor of the heir of the patron, maintained that the sum specified by the testator had been fully expended in the construction of the work, and therefore, the power granted by the testator to allocate a portion of 20,000 scudi for sacred vessels for the use of the chapel, if the heir deemed it appropriate, had completely ceased. Therefore, the

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inheritance, which was being administered for augmentation, could not be further burdened. Especially since the Regulars themselves recognized that the heir had the option, according to the form of the will, to provide the vessels, which excludes any obligation. DEFENSE OF THE REGULARS. On the contrary, the Regulars maintained, based on common law, that the patron was obligated to provide the vessels. The construction of a church, and its ornaments, are legally equivalent, as stated in *Pignatt.*, vol. 6, consult. 15; *Ferraris, Bibliotheca*, v. Chapel. They did not consider that this legal provision could be nullified by the aforementioned power granted to the heir by the testator. For this power only concerned the means from which the vessels for the chapel should be obtained; it did not grant the power to provide or not provide the vessels, a power which the testator could not grant without contradicting himself. For the testator had absolutely mandated that the chapel be adorned, and he could not exclude sacred vessels from this provision, which are the principal and necessary ornaments of any chapel. Therefore, the heir could expend a portion of the specified sum on sacred vessels, but if he did not do so, the obligation to provide them remained. Furthermore, the response of the Sacred Congregation in Urbinate, February 28, 1665, *lib. 24 Decret.*, page 120, was added, in which it was declared: "The ornaments of the altar, and the instruments of the chapels for divine worship, must be provided by the patrons, if they have not assigned a sufficient income from the endowment, even for the preservation of divine worship." The question: "Whether the sacred vessels must also be provided by the patron in this case." SOLUTION OF THE QUESTION. The Sacred Congregation, after deliberation on May 28, 1864, ad pro-

[*Latin ed. p. 151*]

CHAPELS REGARDING SACRED UTENSILS. 151. A question is posed, and the answer is: Affirmative, concerning all utensils necessary for the adornment of the altar and the chapel. From the above, we gather: I. The right of patronage over a free chapel within a regular church, consisting solely of the aforementioned honorary rights, can be obtained with the consent of the Regulars, and with the approval of the Apostolic See. II. This approval can be reasonably hoped for by one who seeks patronage, if he spends money to remodel the chapel in a more elegant form, and, according to the prescriptions of the Sacred Canons, undertakes the burdens which patrons are legally obligated to bear. III. Therefore, having obtained this right, such a patron is obligated, in addition to the expenses incurred in the restoration of the chapel, to provide the necessary utensils for the altar and the chapel, as well as to maintain them, unless a sufficient income from the endowment has been assigned for this purpose. PARISHES. – March 31, 1860. SUMMARY OF PRAYERS. – Bishop A. stated: "That in his diocese, there is a parish priest who, although he does not neglect other parts of his

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office, has nevertheless, with great levity, contracted so much debt that, according to the judgment of a secular judge, i) one-third of his income is already seized by creditors, so that both his parishioners and those to whom he owes money are scandalized, and, in his person, they condemn the entire state of the clergy. Furthermore, he has proceeded to the point where he has converted a considerable sum of money, taken from the fabric of the parish church, for his own use, with the intention of repaying it, but also with the danger that he may not be able to repay it later. Indeed, since this priest has often and seriously been warned, and there is no reason to hope that he will reform (in the future), due to his poverty, a penalty..."

[*Latin ed. p. 152*]

152 PARISHES. "It cannot be financially penalized, nor is there hope that ecclesiastical penalties, involving the deprivation of the benefice, will be reduced to a milder form, for the betterment of the parishioner. The Bishop humbly requests that a response be given to the following question: Can the aforementioned parish priest, if, as the Orator maintains, he is not reformed, be deprived of his benefice, due to the aforementioned extravagance, and perhaps other similar faults, as established by the Most Holy Council of Trent, session 21, chapter 6, concerning the reform of those who live scandalously and disgracefully? And can such a deprivation be justly imposed upon him? If not, what other legal remedies are there for the scandals that such a parish priest or beneficiary publicly presents, and what measures should be taken by the Bishop to avert the danger posed by such individuals?

After these explanations, the following observations were added, as a matter of duty. Some argued that the penalty of deprivation of the benefice should be imposed in this case, citing the words in the aforementioned chapter of the Council of Trent, where it is stated that clerics who live scandalously and, after being warned, persist in their scandalous behavior, can be deprived of their benefice by the Bishop; and the Bishop testified that the aforementioned parish priest is indeed causing scandal through his extravagance. And this is all the more true if one considers that no other penalty, less severe than the deprivation of the benefice, is likely to effect a genuine reform in the parish priest.

However, it was observed that this most serious penalty cannot, in all justice, be imposed to correct the aforementioned fault, neither by the laws of the Holy Canons, nor by the decree of the Council of Trent. For the Canons prescribe that clerics who are apostates, murderers, or guilty of other crimes of a more serious nature, should be punished by the deprivation of their benefice; but not those who are burdened by debts. Furthermore, the Council of Trent, in the aforementioned passage, speaks of clerics who are tainted by the vice of concubinage and lewdness, who, indeed, live scandalously and disgracefully, as the words used by the Council seem

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to indicate, according to the common opinion of theologians, as stated by Pichler, chapter 2, on cohabitation with women.

Moreover, it was not considered that the proposed penalty would be effective; rather, the parish priest who is deprived of his benefice, and therefore reduced to poverty, would be further burdened by debts, and might even be forced to beg, which would be a great disgrace to the clerical order.

However, in order to address the evils arising from the aforementioned extravagance of the parish priest, and to prevent greater damage to the fabric of the church, and since there was no hope that he would reform himself if subjected to lighter penalties, it was submitted to the Most Reverend Fathers for consideration: whether..."

[*Latin ed. p. 153*]

PARISHES. It would be more fitting to deny the same Parish Priest administration of the goods of the church and the parish benefits. For this legal remedy, which civil law dictates should be applied to prodigals, is justly applied in the case where the Parish Priest, acting like a prodigal, recognizes neither measure nor limit in incurring debts. However, it could be entrusted to an administrator appointed by the Bishop, that the revenues, after deducting the necessary expenses for a suitable presentation of the Parish Priest, be applied to the payment of debts and to the restoration of the church building.

DECREE. – The Sacred Congregation of the Council, on March 8, 1860, decided that this matter should be addressed with the following principles: there is no place for a private benefit, but rather for the appointment of an ecclesiastical administrator over the goods of both the parish and the church building, who, after deducting the necessary expenses for a suitable presentation of the Parish Priest, shall allocate the remaining revenues to the payment of debts.

MOST HOLY CONGREGATION OF BISHOPS AND REGULAR CANONS, CONCERNING CHAPTER DELIBERATIONS AND NOMINATIONS. July 28, 1865. Summary of the case. The Cathedral Canon of the city of A., acting as the executor of the last will of Charles, on April 3, 1843, took steps to canonically establish a church chaplaincy within the same church, having previously obtained the proper consent of the Chapter, and with the following conditions: that the chaplain should serve the choir, be prepared to assist in the absence of other chaplains (that is, to provide priestly ministry at the altar), and assist the singers in Gregorian chant (and this obligation was not imposed by the testator, but by).

[*Latin ed. p. 154*]

154. CONCERNING DELIBERATION, CHAPTER, AND NOMINATION. It had been stipulated that the Chapter should appoint, and finally determine, a certain number of Masses to be celebrated, either by

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themselves or by another. Regarding the passive patronage of the same Chapel, or the nomination of the Chaplain, it was stipulated according to the will of Charles, that this right should belong to the Canonical executor of the testament, as long as he lived, without being bound by any condition to observe the stipulations imposed upon the Chaplain. Afterwards, when the Canonical executor of the testament had passed away, it was determined that the right to nominate the Chaplain should revert to the entire aforementioned Chapter, with the addition of the law that the Canons should choose a native of that city, residing there, who was nearest to the Sacred Orders, endowed with good morals, poor, and lacking in worldly possessions; who, if he should ever be enriched by his own property, a benefice, or a pension, should, without delay, relinquish the Chaplaincy, and another should be appointed in his place. The testator, with the utmost insistence, had demanded that this be carried out. The first to renounce this Chaplaincy was Angelus, who, having obtained two suitable benefices in the year 1864, spontaneously sent a message to the Chaplaincy. After the vacancy occurred, the Canonical executor of the testament, still enjoying life and fearing that he might err in the election, renounced and ceded the right to exercise the nomination to the Most Reverend Chapter, so that the nomination of candidates might always be made with greater deliberation and consideration, in order to choose a man suitable for the greater benefit of the Church. After this renunciation had been accepted by the Chapter, on May 12, 1864, the Canons assembled in the chapter hall, but the meeting was adjourned because none of the candidates who were present could demonstrate knowledge of Gregorian chant. Therefore, on June 9 of the following year, the Canons met again, and the same candidates were present, all except one, Frederick, as it was claimed, having demonstrated their expertise in Gregorian chant. There were six in number; two priests, and the others were clerics. When five of them had already been proposed for scrutiny, and the sixth was to be considered, one of the Canons rose and declared that Aegidius, that candidate, was the nephew of another Canon, B., and therefore he was prohibited from voting for his nephew; for it is prescribed in the diocesan synod that if any Canon or...

[*Latin ed. p. 155*]

"Regarding matters requiring a vote, Chapter 155 states: If a relative or affine within the second degree is involved, that person shall abstain from the vote, and shall only be admitted after the matter is concluded. – Canon B. left the chapter hall, protesting and declaring (as is recorded in the chapter deliberations) that, if it could be demonstrated that he possessed the right to cast a vote, which was being denied to him, his intention was to vote in favor of the Cleric Giles (his nephew, to be precise). Canon B. having left the chapter hall, the Canons deliberated and decided to prevent

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him from voting for his nephew, and therefore, the previous votes, being tainted with nullity, had to be repeated; consequently, the entire process was annulled without any record being made of the outcome. This deliberation was communicated to Canon B., who reiterated his protestation, adding that, in any case, just as his intention was to give his vote in favor of Giles, so too would his intention be to give his vote against all others, and he then left. – In the repeated vote, four of the six candidates received the minimum number of votes. However, Cleric Giles, the nephew of Canon B., received four favorable votes, and three against, out of the seven present. Cleric Frederick, on the other hand, received six favorable votes and one against. Therefore, Frederick, having obtained the majority of votes, was declared to have been appointed to the vacant position within the assembly. Two days later, Canon B. formally presented a protestation to the Episcopal Chancery, in which he sought to have the chapter deliberation annulled, citing several reasons, and he insisted that Frederick should not be canonically instituted, since he had been appointed through a flawed and invalid process. Consequently, Frederick, relying on the greater number of votes, insisted on the validity of his appointment, and presented his petitions to the Sacred Congregation and the Royal Court, demanding that he be installed in the benefice. The Sacred Order, as is customary, referred these petitions to the Ordinary, instructing him to hear the parties involved, to express his opinion, and to provide a written copy of the chapter constitutions relevant to the matter. The Ordinary complied with this instruction, but refused to provide the chapter constitutions, stating that the Chapter had indeed drawn them up, but they had not yet been definitively approved."

[*Latin ed. p. 156*]

156 CONCERNING DELIBERATIONS, CHAPTERS, AND NOMINATIONS. It had been approved by the Chapter, and therefore the Ordinary did not need to request its confirmation (1). After hearing the parties once again, the case was presented in a plenary session of the Sacred Congregation. Therefore, in the consultation, which was typed, it was primarily established that the validity of the nomination, upon which Frederick claimed to have been canonically instituted to the chaplaincy, depended principally on the validity of the deliberation of the Chapter of June 1, 1864, in which, by a majority of votes, he had been rejected for the same chaplaincy. Given these circumstances, it was deemed very important to investigate whether that deliberation was valid, and even more so, because Canon B. vehemently contested it and insisted that it should be declared null.

1. A summary of the arguments. Several reasons were brought forward, both for and against the arguments presented, and we propose the following:

THE CHAPTER DELIBERATION AND FREDERICK'S NOMINATION

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ARE CHALLENGED. — It is stated that the solemnities which are properly prescribed by pontifical law for an election are of two kinds: one arising from positive law, the other arising from natural law itself, as Pitonius himself states in Disput. eccles. 24, n. 4 and 16. The latter category may include, for example, the following: that the votes of those electing are free, not coerced; that the majority, or the wiser, not the lesser and more foolish, prevails; and other such elements which naturally adhere to any election and which must be carried out by a certain group of people. To this belongs also the condition that the nomination be completed in a collegial assembly, duly convened; otherwise, the election (1) The Synod of Rome, held in 1725, Title 2, chapter A, decreed that Chapters of cathedrals and collegiate churches should complete their own Constitutions within six months and present them to the Ordinary for approval. This decree, according to the words used therein, extended to all Chapters throughout the Catholic world; and therefore, the Sacred Congregation not only in its responses to reports from Bishops concerning the state of their dioceses, but also in general assemblies, whenever the opportunity arises, solemnly insists and urges that these Chapters comply accurately with this prescription, even if they may perhaps be lacking in their own statutes. Therefore, it is to be wondered at that the Chapter of the city of A. has not yet complied with this decree of the Roman Synod; and even more so, since there is no doubt that it has received more than one incentive from its superiors regarding this matter.

[*Latin ed. p. 157*]

CONSIDERATION. CHAPTER AND NAMELY. 157. It was not the case that an act was elicited from the collective moral body, but rather that it was resolved through the separate votes of each individual, which votes, being distinct, could not constitute a morally unified act, as is clearly stated by Gregory IX, chapter on Genesis 55 concerning Elections. From this explanation, it follows that, in the case we are discussing, the election of the Chaplain was necessarily to be carried out collegially; for the Canon, as executor of a will, and the testator himself, did not grant the right of choosing the Chaplain to individual Canons, as happens when a testator reserves the right of patronage to certain families; but rather to the Chapter, as a single moral person, which secures its own subsistence and life within the duly constituted assembly. Fagnan, Chapter on Elections, no. 37, from *De For. Ben.*, volume 4, § no. 552. Pignatt, *Consilia*, 22, no. 7 and 8, volume 1. Piton, *Disputationes Eccl.*, 24, no. 16. Moreover, it must be added that any assembly of Canons held capitularly can truly be said to require, besides the other conditions mentioned by Ferrario, in the article on Chapters, Art. I in the Appendix, that all the voting members be invited. See also Piton, *Disputationes Eccl.*, 100, no. 40. De Luca, *De Canon.*, Discourse 27, no. 15. *Rota Decis.*, 278, no. 21, page 12, and elsewhere. When we say that all

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must be invited, we also mean that they must necessarily be admitted to cast their votes. For the voting members can rightly consider themselves to be treated with contempt, not only if they are not invited, but also if, even after being invited, they are unjustly prevented from casting their votes; indeed, it is more shameful to exclude someone who is admitted as a guest. And certainly, he who is prevented from casting his vote is equivalent to one who is not invited. Chapter on Genesis 55 on Elections, § and no exceptions. De Luca, *De Canon.*, Discourse 27, no. 15. Keuffest, L. I, Decrees on Elections, no. 115. Indeed, it is easily demonstrated that a Canon can be illegally excluded from the capitular assembly and from casting his vote. For, in the first place, according to the most evident provision of civil law – the vote of the father benefits the son, and the son benefits the father, as well as those who are under the father's power: for as the Decurio gives his vote, not as a domestic person, but in those matters which concern public law, it is presumed that he is moved more by the public good than by any other particular affection – L. Illud and L. Item, *Dige.*, *Quod cuius.*, *Univers.*. This provision is in accordance with canon law, and with the declarations of the Holy See, especially in the election in Lucca, in which, when the Canons, by law, alter-

[*Latin ed. p. 158*]

158 CONCERNING DELIBERATIONS, CHAPTERS, AND NOMINATIONS. Native members were to enjoy the right to vote in the election of Canons, and, after a vacancy had been declared, the question was raised whether a Canon related by blood to the Canon of the Divine Good should be excluded from voting in the election in question; the response issued on September 19, 1818 was – Negative. Furthermore, it was not stated that a synodal decree had any force in this matter, for in the present case, it could not override the will of the testators. Thus writes Piton, Alleg. 30, De Contr. Patron, n. 1, and following. – For the law establishing the foundation is far older than the synodal constitution, and it is there stipulated that the right to present a candidate must belong to the Chapter and the Canons, without exception; therefore, the aforementioned constitution has no place in the election for this benefice, which is by right a patronage. – The Sacred Rota agrees with Piton, as do the Doctors; nor does the Sacred Congregation dissent, as can be seen in the case of the chaplaincy in Ferentino, and it does not seem inappropriate to present this case here. A certain Cuppinius had founded a chaplaincy in the Cathedral of Ferentino, reserving the right of active patronage to the Canons, and the right of passive patronage to relatives of the founder himself, and secondly, to the clergy of Ferentino. When this chaplaincy became vacant, it happened that three Canons were related by blood to one of those who aspired to the chaplaincy. Since, according to the synodal decree of Ferentino, as also happened in the diocese of the city of A., it was stipulated that the Canons should not vote for relatives, these

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three Canons were instructed to leave the chapter house when the meeting was held in which the election of the chaplain was to be discussed. These Canons, in fact, left; but on the same day, they formally issued a protest against such exclusion. When the matter was brought before the Sacred Congregation, the question was raised: "Whether and in what way should the Canons within the third *gradum* [degree] have the right to vote in the case of the chaplaincy of Cuppinius?" The Fathers replied on March 1, 1834 – Affirmative, by secret vote. The validity of the resolution of the chapter of June 9 was defended, but Canon B. was, in fact, excessively related, and therefore, it was useless for him to take action regarding the contempt he had suffered when he was excluded.

[*Latin ed. p. 159*]

ON DELIBERATIONS. CHAPTERS. AND NAMES: i. 59. The aforementioned Fridericum was excluded from the chapter, for the reason that he had sufficiently and manifestly declared his will in that matter, from which he could no longer retract. For it was argued that such a declaration should be considered, in the first place, as imperfect, and all the more so because it had arisen from a state of agitation of mind: for, seeing himself unjustly excluded, inflamed with grief and disturbed in his mental tranquility, he was unable to determine what to do or say. Therefore, this declaration attained its perfection through a protestation issued two days later in the Episcopal Chancery, in which the Canon B. asserted, in the following words, the nullity of the resolution. Indeed, this declaration had a clear condition attached to it, namely, if the faculty that was being denied to him truly belonged to him. Therefore, his vote was not absolute and pure, but subject to a condition. However, since votes must be given freely in a chapter, they are to be considered among the legitimate acts; and therefore, they do not accept a date or a condition, according to L. 77 of the Body of Civil Law. Furthermore, canonical law most clearly states that votes must never be conditional; for in Cap. 2 De Elect., paragraph 6, it is written: "In elections, and in postulations, and in scrutinies, and in all matters arising from these, conditional, alternative, and uncertain votes are altogether rejected." On this matter, see Piton, Disput. Ecc. 100, nos. 100 to 119, as well as the Sacred Congregation of Councils in the Commentary on the Benefits, dated July 13, 1771, § hunc autem § nihilque § ad novam. Furthermore, it was the case that, according to a synodal decree of the city of A., votes must be secret, and Canon B. had declared his vote openly and publicly. Finally, Canon B. asserted (without, of course, presenting any legitimate document to support this claim) that Fridericum had not been elected to the chaplaincy by the chapter, because he lacked knowledge of Gregorian chant. Regarding this, the chapter itself was much surprised. Indeed, when the canons were first assembled, they postponed the meeting because none of the candidates had demonstrated knowledge of Gregorian chant. When they met again,

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they placed among the candidates the one who, of all, only lacked this quality. It was wrongly objected that the obligation of this quality did not originate from the candidate, but from the chapter: since, once included in the canonical decree of erection, that decree must be observed until it is legitimately corrected.

[*Latin ed. p. 160*]

160 CONCERNING DELIBERATION, CHAPTER, AND NOMINATION. It was also the case that what the Canons objected to was not that they had been brought to the nomination by a right granted to them by the Testator, but by a right of renunciation granted by the testamentary executor in their favor: for that executor had sufficiently and abundantly demonstrated that he had permanently renounced the right of nomination, as if he himself were dead, and that the Canons should proceed to the nomination according to the will. DEFENSE OF THE CHAPTER'S DELIBERATION AND THE NOMINATION OF FREDERICK. — Given the preceding legal theory concerning such elections (1), and with minor difficulties set aside, a stronger and more convincing argument was presented in favor of the chapter's deliberation and the nomination of Frederick in this manner. Although it was conceded that the Canon B. had been unjustly prevented from voting, it was not therefore argued that the act of nomination should be considered null and void. Indeed, it is clear and undisputed in law that when someone has suffered exclusion, or, as is commonly said, has been treated with contempt, the act of the chapter is not, by itself, null, but rather retains its full force; except that the one who has been treated with contempt is not prohibited from acting on the grounds of nullity, and also has the right to obtain the rescission of the same, if the contempt was complete (1) Several formalities must be observed according to the prescriptions of law in the proper conduct of a canonical election, as can be seen in title I, chapter 1, Decret, and specifically in chapter 42, because, for example, three scrutators must be elected, the votes must be recorded in writing, and other similar things must be carried out, the omission of which completely implies nullity. But these apply only to the elections of Prelates, whether secular or regular, as is commonly taught by Doctors, among whom it is appropriate to cite Fagnanus in the aforementioned Commentary, chapter 6, and following, numbers H, 10, and following, who further, in numbers 36 and following, lists the individual series of these formalities. Indeed, this form is so uniquely reserved for properly called elections that it is not even applied to the creation of chapter vicars: for that office is precarious and does not confer preeminence. See Leuren, De form. Benef. De Const. et qual. Fic., chapter 550, volume 4, with the common opinion of the Doctors. Therefore, it is much less necessary for this form to be observed in the nominations of simple benefices and chaplaincies. Piton, Discept. Eccl. 21, number 4,

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writes: "The chapter can proceed in the election, and consent in a manner pleasing to itself, either 'by word or by deed, either before or after the election, and at any time,' provided that consent is given either 'by all or by the majority of the canons.'" Furthermore, the Sacred Congregation, in the decree concerning the Mansionariae in Gubbio, April 1794, and elsewhere, has ruled similarly.

[*Latin ed. p. 161*]

ON DELIBERATION. CHAPTER, AND NAMELY. It was demonstrated to him that he could. For it is clearly stated in chapter 28. As also, chapter 36. Of the elect of the Good God. Fagnan, ad chapter {}uia concerning the elect, no. 39. Reiffenstuel, De Elect., book 1, chapter 15. In these previously established legal principles, it was decided by the Canon B. that the deliberation of the chapter had not been absolutely and simply impugned, but with a condition. Indeed, he himself expressed himself in these terms: "If I have the right to cast a vote, and the exclusion of Subii is unjust, then my intention is to give each person a voice, except for Aegidio, my nephew."

Now, if the first part of this declaration were to be considered fulfilled, and therefore the exclusion was unjust, it would only follow that each competitor would receive one vote against, and Aegidio would receive one vote in his favor. Thus, Aegidio, who had received four white votes, would then claim five votes for himself. But, of course, Frederick, who had already received six white votes, would not, because of one vote against, be able to boast of a greater number of votes than Aegidio. Nor would Canon B. accomplish anything if he presented a protest two days after the chapter meeting, on June 9th, to the Episcopal Chancellor, in which he explicitly asserted the nullity of the chapter's deliberation, and requested that all actions be rescinded. For, since he had sufficiently declared his intention on this matter when he left the meeting, he no longer had the power to revoke and change his action; for, as the common saying goes, what has once pleased cannot afterward displease. Furthermore, once the resolution of the chapter had been ratified by him, whatever fault it may have had was thoroughly purged and diluted. Otherwise, ratification is expressed not only in words, but also in deeds. "Not only can something be considered valid in words," says the jurist Paul, "but also in deeds," L. 5, Digest, Balam rem. Nor would Canon B. accomplish anything if he claimed to have done so out of error and ignorance, for a false reputation excuses no one, nor can a voluntary act be considered one that someone performs, led by a false hope or opinion. Gratian, Discept. Forens., chapter 765, no. 49. Bola, Decis., 287, no. U p. Furthermore, although some shadow of doubt might still remain, it was held that, for the validity of the act, one must adhere to

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the Acts, volume I, section III, ii.

[*Latin ed. p. 162*]

162 CONCERNING DELIBERATION. CHAPTER. AND NOMINATION, on account of the general rule, which holds that every act is to be considered valid until the contrary is proven, but also on account of the special rule accepted in matters of election, in which the election is understood to hold force until he to whom it pertains legitimately demonstrates the nullity of the election with valid arguments. Piton. Disput. Eccl. 100 n. 221 et seq., and this agrees with the common teaching of interpreters. Regarding the lack of expertise in Gregorian chant, which was objected to against Frederick, there was not a single word about it in the deliberation of the chapter on June 9, 1864. Nevertheless, it was responded that such a condition did not originate from the testator at all, but only from the Chapter, which otherwise had no power to add conditions not at all prescribed by the testator. Furthermore, in the present state of the vacancy, the canons had not exercised the right to nominate, by virtue of the will of Charles, but in force of a renunciation issued by the canonical executor of the will, with the favor of the Chapter. Therefore, since this one was not bound by any obligation to nominate Clericum endowed with the qualities prefixed by the Testator, neither was the Chapter, as the holder of the session, obliged to choose a chaplain adorned with expertise in Gregorian chant and other merits. Before the end of the consultation was put, there was an effort to declare the nomination of Frederick as perhaps null. However, it was judged that the deliberation of the chapter of June 9, 1864 should remain in its full force, if indeed the expertise in Gregorian chant were considered a substantial element in the case in question, and if Frederick truly lacked it. With this established, it was deemed necessary, according to the second point below, not to omit the formula of the doubt. Doubts. I. "Whether and how the deliberation of the chapter of June 9, 1864 is maintained in this case." II. "Whether and how the nomination of Frederick for the chaplaincy is maintained, so that he should be given canonical institution in this case." RESOLUTION OF THE DOUBTS. — The Fathers, in the elections held on July 28, 1865, responded as follows: with regard to the first and second, after a declaration issued by Canon B. in the chapter hall, affirmatively in all respects.

[*Latin ed. p. 163*]

ON DELIBERATION. CHAPTER AND NAMELY. From what has been explained, you may gather the following:

I. In accordance with the decree of the Roman Synod of the year 1725, title 2, chapters 4 and 5, each Cathedral and Collegiate Chapter is obligated to establish its own particular constitutions and to present them for approval by the Ordinary.

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II. The solemnities prescribed by canon law for the accurate conduct of elections must be observed in the election of Prelates, whether secular or regular.

III. However, the observance of these matters is not required in elections concerning minor benefices, especially if they are simple.

IV. Nevertheless, those conditions which naturally flow from the nature of the matter, and those which inherently belong to any election to be carried out by a certain group of people, must be observed.

V. Among the conditions to be observed, it is necessary to include the fact that the election must be carried out collegially.

VI. No less important is the condition that no one, that is, no one among those who are electing, must be scorned, that is, excluded either directly or indirectly from giving his vote.

VII. However, the scorn of someone from among those who are electing does not render the election invalid in itself, but rather the election must be declared invalid by a judge (1) if the one who was unjustly prevented from participating brings a suit regarding the nullity.

VIII. Therefore, since such an election is not invalid in itself, if the person in question has declared his will in such a way that it is clear that he has recognized the election or nomination, he is no longer to be heard if he challenges the validity of the election.

(i) There is a great difference between an act that is null in itself, and an act that is not null in itself, but which can be rendered null. In the former case, if a judicial decision is sought, it is said to be merely declaratory; it declares that the act was null from the beginning, and all effects produced by that act are judged according to their origin. In the latter case, the judicial decision renders the act null, without which the act would have remained valid. From this observation, another difference arises between the two acts; for in the declaratory judgment, the act is considered null from its very beginning, and all effects produced by that act are judged according to their origin; in the other case, the act only begins to be null when it has been declared invalid.

[*Latin ed. p. 164*]

Regarding the Right of Funerals. February 26, 1864. By an unjust law, the civil authority, lacking competence, suppressed certain Religious Orders within the Diocese A, so that the Regular clergy were forced to live in private homes, abandoning the cloister and wearing the habit of secular priests. In this unjust and violent suppression, the religious houses and all that belonged to them were seized, only the church being left, to be guarded by the Provincial of the Order. The dispersed Religious strove as much as they could to maintain their regular life, especially by obeying the Superiors of the Order. However, it happened that the Provincial, al-

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though among the expelled Religious, being afflicted by illness, appointed the local parish priest to administer the Sacraments to him and to attend to his final moments. The parish priest, therefore, performed these offices for him, reserving only the fourth day of mourning for himself. Although the surrounding Religious did not object to the parish priest's actions, and indeed followed his example, there was not one, nor even two, of them who did not murmur against the parish priest's conduct, because they considered themselves exempt from his jurisdiction. Nevertheless, after all this had been peacefully concluded, a petition was later secretly submitted to the Sacred Congregation, concealing the author's name, in which certain complaints were expressed regarding what had been done by the parish church, since there were Regular clergy who could have performed the funerals; but these matters were overlooked, and the petition implored the Sacred Congregation to establish a general rule for similar cases that might arise in the future. The Sacred Congregation sent the petition, for information and opinion, to the General Chapter of the Order, and upon receiving their response, it was transmitted for the same purpose to the Bishop, so that the parish priest might also be heard in writing, and the matter was then discussed under a question placed at the end, the resolution of which would be the future norm.

[*Latin ed. p. 165*]

ON THE RIGHT TO FUNERAL RITES. 165 A concise discussion. The entire question revolved around whether Religious, dispersed by unjust suppression, were subject to the parochial jurisdiction concerning funerals. We will briefly address the reasons, both those found in the special vows and those added by obligation, in this discussion.

ARGUMENTS IN FAVOR OF EXEMPTION. It was observed, in favor of the Religious, that an illegitimate act of suppression could not produce legal effects that a legitimate suppression would produce. For the act itself is invalid by law, and therefore cannot take away the privileges of the Religious. Especially since, among the Religious, although dispersed by violence, the moral bond of governance was nevertheless maintained, and due obedience was rendered to their Superiors; therefore, they could also meet together in their own church to perform the acts of regular profession, and especially to perform the supreme offices for their confreres. Since, therefore, there is no impediment that, by law, does not produce an effect, the privileges of the Religious should remain intact.

Furthermore, among these privileges, it is worth noting that which is found in chapter 5 concerning burial. In these words: "Religious, unless they are so far removed from their own monasteries, perhaps to the point that they cannot be conveniently transported to them when they die, cannot (since they have no will or choice) choose their burial place, but must be buried in their monastery." Therefore, a Religious who dies should be

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buried in their monastery, and cannot choose their burial place, except in the single case in which they are found to be very far from the monastery. This case, however, was not at all verified in the present question. Indeed, besides the church near the Religious about whom we are speaking, there were other monasteries, not very far away, of the same Order, which had not suffered suppression.

Moreover, the same authors, as Sánchez teaches, also teach that a Religious who is very far from their monastery can be buried there.

(References to Pelizar in Man. Reg., Bordón, and Petra ad Const. are omitted as they are not part of the English translation.)

[*Latin ed. p. 166*]

166 ON THE LAWFUL PRACTICE OF FUNERAL RITES. concerning churches belonging to different families, which are included under the same Order. Therefore, it was concluded that, since the Provincial could conveniently transport the body to the aforementioned churches, it should not be buried in the parish church. But, furthermore, it was observed, from the teachings of the Doctors, that Regular clergy who die outside the cloister, even without consulting the parish priest who administered the sacraments to them, can be brought to their own church. And on this matter, Pignatelli, Constitutions, 199, number 1, volume 4, cites the following resolution of the Sacred Congregation, dated July 2, 1620, concerning a doubt which we translate into the Latin language as follows: "Since it sometimes happens that Regular clergy, especially the Canon Regulars of Lairana, die outside the monastery, in the home of their relatives, and the parish priests administer the sacraments to them, it is asked whether, by order of their Superiors, they can be brought at night to their church without informing the parish priest in any way, so that the parochial rights are not given." (1) The Sacred Congregation responded: "Regular clergy who die outside the cloister can be brought to their church, even without consulting the parish priests." It was also argued that it does not impede that only the parish priest has the right to administer the sacraments to a Regular cleric dying outside the cloister, according to what is taught by Petra, loc. cit., number 13, confirming this doctrine with a resolution of the Sacred Congregation in Collena, April 11, 1609. For it is one thing to administer the sacraments, and another to have the right to the funeral and burial, which, as stated above, pertains to the Regular clergy.

WHAT WAS OBSERVED TO THE CONTRARY—In favor of the parochial jurisdiction, it was observed that there is a distinction between the suppression of a right and the suppression of an act. Here, we are dealing with the suppression, or more accurately, the oppression of an act, arising from an unjust violence by which the Regular clergy were forcibly removed from the cloister, and the means necessary to continue their regular observance were taken away. Furthermore, although this

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suppression is entirely illegitimate, and therefore legally null, nevertheless, due to the sad consequences that resulted from it, the Regular clergy find themselves in a situation in which they cannot exercise some of their privileges, such as...

(1) In Italian, the doubt was expressed as follows: "Whether, when the Brothers die, as happens sometimes, and especially the Canon Regulars of Lairana, outside the monastery, in the home of their relatives, and the parish priests have administered the sacraments to them, whether their Superiors can bring them at night to their church without informing the parish priest in any way, and without giving him the parochial rights."

[*Latin ed. p. 167*]

ON THE RIGHT OF FUNERALS. 167 Concerning the supreme offices to be performed by a regular family. Indeed, because of such suppressions and the dispersal of religious, it was necessary to seek the intervention of the Holy See in order to restore things to their former state; as happened after the last suppression and dispersal carried out by the French government. Furthermore, to more specifically confirm the matter under discussion, two resolutions of the Sacred Congregation of Councils were presented concerning dispersed nuns due to the suppression of the monastery. For example, a certain nun died in the year 1818 in her own house in *Indiae*, who had a family tomb in the parish church of Saint Gregory; another parish priest of Saint Martin, within whose parish the monastery was located, in which the nun had made her profession, claimed the right to oversee the funeral, all the more so because the nun had not chosen her burial place. However, the Sacred Congregation issued a ruling in favor of the parish priest of Saint Gregory. Also, in another document, on June 36, 1824, another case was presented concerning parochial jurisdiction in a suppressed monastery of nuns which had not yet been restored. Nuns were living in this monastery, and a local priest, the Confessor, approached it on Holy Saturday to administer the blessing, but was repulsed by the nuns. This action was condemned both by the Archbishop and by the Sacred Congregation, which on March 28, 1817, sent a letter to the same Archbishop, "so that, through appropriate measures," the Archpriest (parish priest) might freely exercise "all the acts of his jurisdiction in the monastery of Saint Catherine, which has not yet been restored, and furthermore, so that in the future, no scandals or anything improper may arise concerning the exercise of the rights belonging to the aforementioned Archpriest." (1) From the book of the nuns, 1817. Therefore, regular religious, although illegally expelled from the monastery, are, with regard to certain effects, equated to those who are legitimately dismissed, and who, as the authors say, recover, their will and wishes.

(1) In Italian, it was expressed thus: "So that, through appropriate measures," the aforementioned Archpriest may freely exercise "all the acts of

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his jurisdiction in the not yet restored monastery of Saint Catherine, providing furthermore for the future so that no scandals or inconveniences may arise concerning the exercise of the rights belonging to the aforementioned Archpriest."

[*Latin ed. p. 168*]

168 CONCERNING THE RIGHT TO PERFORM FUNERAL RITES: Those who belong to a religious order, or those who have obtained the Indult of secularization, are equal in this regard to those who have the right to perform funeral rites. Indeed, they do not wear the religious habit, they use money for their daily needs, and they enjoy a certain freedom, which those living under regular discipline within the monastery do not possess. Therefore, just as those who are subject to the episcopal jurisdiction by legitimate right, so too, although through an illegitimate suppression, these individuals are considered to be subject to the same jurisdiction, and consequently also to the parochial jurisdiction, due to unavoidable circumstances. However, this must be understood in such a way that it cannot be said that the privileges of the religious orders have been extinguished, but rather suspended, so that when the violence of the suppression ceases, and things are restored to their former state, as if by a right of resumption, the privileges will be restored in their full force.

Doubt: "To whom does the right to perform funeral rites extend, with regard to those religious who have died, given the current state of affairs?"

RESOLUTION OF THE DOUBT: The Sacred Congregation of the Eastern Churches and the Religious Orders, after discussing the matter on February 26, 1864, decided to respond affirmatively, stating that dispersed religious are subject to the parish priest regarding funeral rites, just as other parishioners are.

From this, we gather the following:

I. The parish priest is obligated to administer the last sacraments to a religious who has died outside the monastery, but he does not have the right to perform the funeral rites.

II. However, the parish priest does have this right if the religious has died far from his monastery, so that it is not convenient to transport his body to the monastery, unless otherwise determined.

III. Religious who are dispersed, even due to an illegitimate suppression, are subject to the parochial jurisdiction regarding funeral rites, just like other parishioners.

IV. Therefore, the privilege of burial pertains to individual religious not as individuals, but insofar as they are members of the same associated family living within the monastery walls, under regular discipline.

(1) Perhaps you will object: "If this observation were true, it would follow that any religious who dies outside the monastery must be buried

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in the parochial church." But this objection is answered by the fact that a religious living outside the monastery...

[*Latin ed. p. 169*]

16. JURISDICTION OF THE ECCLESIASTICAL PATRON. March 4, 1864. Summary of the case. In the year 1707, the patronage of the parish church of A, which was formerly held by the layperson Titus, passed to the Regular Order of B. During the last vacancy of the parish of A, which occurred in March of 1864, the capitular vicar (since the Episcopal See was without a pastor) convened an assembly according to the law of Trent. However, considering that the collation of the aforementioned vacant parish was reserved to the Holy See according to the regulations of the Chancery, he denied the right of election among the approved patrons who were members of the Regular Order, arguing that the election of a pastor in this case belonged to him, with the understanding that the Regular Order would present candidates to the Holy See, whom he would choose from among the approved. The Regular patrons, who maintained that both the right of election and the right of presentation belonged to them, brought the matter before the Holy See, and the question to be resolved, which we refer to at the end, was submitted. Synopsis of the discussion. DEFENSE OF THE CAPITULAR VICAR. The capitular vicar, who had presented his reasons, was supported by the argument that the patronage in question, although perhaps originally lay, does not cease to be a member of the associated family within the monastic enclosure, living under regular discipline, by virtue of its transfer. For this reason, the monastery claims the right of burial concerning such a deceased person; and if it were not considered a member of that associated regular family, it could not claim this right, as, for example, it could not claim it over Regulars who have obtained the indult of secularization. Therefore, citing Petra and others, and referring to Const. Honorii III, n. 43, section 1, volume 2, it is taught that "parishes cannot claim the burial of the bodies of deceased Regulars" outside the cloister, and those who are buried in their monasteries, for the reason that "a Regular, by his habit, is always considered to be under the discipline of the monastery." Therefore, if, for any reason, this monastic discipline is dissolved and becomes impossible, so that the Regulars are forced to live outside the monastic enclosure, the privilege in question ceases; it is necessary. Therefore, as you observe, legal effects can result only accidentally, and only through illegitimate violence; in this case, the exercise of this privilege remains suspended, which, although it pertains to individual Regulars, is not exercised as individuals, but as members of an associated family under regular discipline; and if that discipline is

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dissolved, the local right of the parish must prevail.

[*Latin ed. p. 170*]

170 ECCLESIASTICAL JURISDICTION. The ecclesiastical jurisdiction, having been transferred to the moral body of the Church, has changed its nature, and ecclesiastical jurisdiction, according to the text of chapter one, concerning patronage, in section 6 of Keiffenstetter's book 3, title 28, number 49. Furthermore, concerning parishes, the Council of Trent, in session 24, chapter 18, states: "If, indeed, a parish church is subject to ecclesiastical patronage, and the institution pertains to the Bishop himself, and not to another, then he, whom the examiners judge to be the most worthy, shall be presented to the present Bishop, who is bound to institute him. But if the institution is to be made by another, than by the Bishop, then the Bishop alone shall choose the most worthy from those presented to him by the Patron." Therefore, since, in this case, the institution pertains to the Apostolic See, and since the Capitular Vicar, when the See is vacant, holds the episcopal jurisdiction, it seemed to follow that the right of choosing belonged to that Vicar, which, when the See is filled, belongs to the Bishop. As indeed, the Decree notes, as Benedict XIV states in *de syn. dioeces.* I. 4, chapter 8: "He judged it to be religiously guarded," that the Sacred Congregation declared that even when the institution pertains to the Pope, so that when a parish church is vacant during the months reserved to the Apostolic See, the power of designating the most worthy, not to the ecclesiastical Patron, but to the Bishop, belongs; as stated by Garzia and Barbosa, where they also cite a decision of the same Sacred Congregation, which states that if a parish church subject to ecclesiastical patronage happens to be vacant during the months reserved to the Pope, it pertains only to the Ordinary to call for a meeting, to announce the more suitable candidate, and that all of this pertains to the Datary of the Supreme Pontiff, with absolutely no consideration given to the Patron of the church. The same Pontiff, in the cited passage, number 10, adds: "The right of choosing the most worthy, in each of the aforementioned cases, belonging to the Bishop, when the episcopal See is vacant, passes to the Chapter of the cathedral church, to which the jurisdiction of the Bishop devolves; but from the Chapter it is transferred to the Vicar, whom, according to the Decree of the Council of Trent, session 24, chapter 16, concerning reform, is bound to choose within eight days from the knowledge of the vacancy of the church." Indeed, Fagnanus states in book 3, decrees, title *Ne sed. vac.*, chapter 3, numbers 18 and following, that a certain norm was established by the Sacred Congregation to be observed in the collation of parishes, when the episcopal See is vacant, in these words.

[*Latin ed. p. 171*]

ECCLESIASTICAL JURISPRUDENCE. 171 concept. "The Vicar shall

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choose him whom he judges to be more suitable than the others," for this power is in no way granted to examiners, but solely to the Bishop, in whose place the Vicar will be" when the See is vacant. He himself, the Vicar, alone, without examiners, will write letters to the Most Holy Lord concerning the collation of the parish, to which the granting of the benefice pertains, in which he will especially testify that "a decree was issued, and that an examination was held through the gathering of candidates, and that so many were examined, and of those examined, so many were judged suitable by at least three examiners, and that, of these suitable ones, he judged one to be more suitable than the others, and chose him." Therefore, it was concluded that the Vicar capitular had the right to choose the more worthy among the approved candidates in this case.

DEFENSE OF THE REGULARS. The Regulars, in their defense, did not contradict what was presented by the Vicar capitular, but, leaning on a new, as it were, fulcrum, they maintained that the collation of a vacant parish belonged to the Holy See. Therefore, they concluded that the election and presentation belonged to them; while the canonical institution should be attributed to the Vicar capitular. Indeed, if the collation of the parish belonged to the Holy See, it would be deduced either from the second rule of the Apostolic Chancery, or from the ninth rule; but neither could be found to support this. In the second rule, the following is stated: "Also, all dignities and benefices for collation and presentation, election, and any other disposition, are reserved to the Patriarchs, Archbishops, and Bishops (not, however, for collation to another or others, or even for the presentation or election of another), which, after their death... dismissal, or loss... in any way become vacant, and will become vacant in the future." Furthermore, this rule adds, "Although the Holy Father reserves to himself the collation of vacant benefices which become vacant after the death of a Bishop or other Prelate or Collationator; nevertheless, those benefices are excepted, the collation of which does not pertain only to the Bishop, but also to others, or to the presentation or election of others, etc." In this case, however, it was a matter of a vacant parish, which was to be provided with a pastor through the election and presentation of the more worthy among the approved candidates, by the Regulars, so that the Bishop would have no part in it except to institute the presented candidate.

[*Latin ed. p. 172*]

172 OF ECCLESIASTICAL JURISPRUDENCE. Furthermore, it could not be objected that such a reservation extended even to benefices of ecclesiastical patronage, and that, if an exception were made in the aforementioned second rule, it applied only to benefices of lay patronage. Indeed, besides the fact that such a distinction is not even implied, no interpreter can be found who would explain the rule in this way. Moreover, it was clearly demonstrated that the ninth rule, under its reservation, did not include

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the vacant parish about which we are speaking. For it was observed that the ninth rule consisted of two parts, in the first of which the Holy Pontiff reserves "all ecclesiastical benefices with and without cure of souls, secular and of any order, whatever their qualification and wherever they may exist, during the months of January, February, April, May, July, August, October, and November... for the granting of provision, presentation... to any collation... to any regular canons... in any way pertaining to them." In the second part, however, the Holy Pontiff grants to Bishops who truly and personally reside in their own diocese the faculty of alternative provision, namely: "regarding all and any ecclesiastical benefices with and without cure of souls, secular and regular, solely for their free disposal or presentation, or election... which in the aforementioned months of February, April, June, August, October, and December, outside the Curia itself, may have become vacant." This faculty of disposal is granted to Bishops in consideration of their residence; it is not, however, granted to Vicars Capitular, especially since the same rule adds: "Those who wish to accept the aforementioned alternative must declare their acceptance of such by means of patent letters signed with their own hand, sealed with their own seal, and issued in their respective city or diocese, and must transmit those letters to the Most Holy Father; and only after they have been received and recognized by him, and not before, may they begin to make use of the aforementioned faculty." Furthermore, it was observed that the first part of the rule does not include the vacant parish about which we are speaking, since it became vacant in the month of March; the second part, with all else omitted, has no application (although the month of March may appear to be reserved for alternative provision according to the calculation of the Holy See) because the Vicar Capitular does not enjoy this alternative faculty.

[*Latin ed. p. 173*]

ECCLESIASTICAL JURISPRUDENCE. 178. Because he descended to the pronouncement, he was falsely accused of acting under the authority of the Vicar Capitular. Therefore, the right to canonically institute the more worthy candidate elected and presented by the Regulars belonged solely to the aforementioned Vicar Capitular, a right commonly granted to the Vicar Capitular when the Episcopal See is vacant, according to the text of chapter 6 of the *Institutes*. There it is written: "Although the Chapter cannot confer benefices that pertain to the Bishop when the See is vacant, it can nevertheless admit those presented by Patrons."

Having considered these matters, the question to be resolved is this: "Whether and in what manner, during a vacancy of the Episcopal See, the right to elect the more worthy candidate among those approved in the competition for the parish of A. belongs to the Vicar Capitular, reserving to the Regulars, as Patrons, the right to present; or rather, whether both the right to elect and the right to present belong exclusively to the

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aforementioned Regular Patrons in this case."

RESOLUTION OF THE QUESTION. — After discussion in the meetings held on March 4, 1864, the Sacred Congregation of Extraordinary and Religious Affairs decided to respond favorably to the Regulars, negatively in all respects regarding the first part, and affirmatively regarding the second.

FROM WHICH WE GATHER THE FOLLOWING:

I. The Vicar Capitular can canonically institute a parish priest elected among the approved candidates through competition, and presented by an ecclesiastical Patron, if such institution, when the See is full, would normally belong to the Bishop by common law.

II. Indeed, it belongs to the Vicar Capitular to choose the more worthy candidate and to designate him to the Holy See among the approved candidates through competition, if at that time the parish is vacant, and the pontifical reservation, according to the rules of the Chancery, is in effect (1).

III. We gather that the second rule of the Chancery does not include benefices that the Bishop confers for the presentation of others.

IV. However, in the present case, the parish was not vacant, but rather was vacant only in March, so it did not fall under the effect of the ninth rule.

V. Having examined the practice of the Chancery, in this case, the Vicar Capitular no longer has the right to elect the more worthy candidate, but only the Bishop, in cases of reservations due to months.

[*Latin ed. p. 174*]

174 FROM THE APOSTOLIC PENITENTIARY: DECLARATIONS OR NEW INDULGENCES CONCERNING THE JUBILEE. Since the celebration of the Jubilee, mercifully granted by the Most Holy Fathers, the pontiffs, on the 8th of December, 1864, has not yet been fully carried out in various places throughout the world, and indeed, since there are not lacking Ordinary pastors who have requested and obtained a postponement of time, We have considered it useful to bring to light the Responses of the Holy Penitentiary, which expedite the path to the celebration of the Jubilee. Therefore, certain questions have already been explained, which, according to custom, We translate into the Latin language, and which are as follows:

I. "Can those bishops who deem it expedient that their dioceses should enjoy the Holy Jubilee (granted by the apostolic briefs of the 8th of December, 1864) during the next Lent, change the three days of fasting prescribed to other pious works? Or, in those places where, through the benevolence of the Holy See, a dispensation has been granted from the abstinence from meat, can they fail to impose this abstinence for three days, notwithstand-

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ing said dispensation, and does the precept of ecclesiastical fasting remain firm?"

II. "Can those bishops in whose dioceses it happens that the time of the Jubilee coincides with the Paschal season, declare to their faithful that – the Paschal Communion suffices to satisfy the Communion prescribed by the Jubilee?"

III. "Since it is useful to prepare the faithful for the acquisition of the Jubilee indulgences by means of Sacred Missions, and since, on the contrary, in a diocese there are not so many workers who can traverse the entire diocese in a single month, can the same bishops designate various months for the different parts of their diocese within the year 1865?"

IV. "In the apostolic briefs of the 26th of March, 1860, the Supreme Pontiff reserved for Himself and His Successors the power to absolve from censures."

[*Latin ed. p. 175*]

NEW INDULT CONCERNING ECCLESIASTICAL MATTERS. 175 "Those who have committed rebellion and usurpation in the provinces under the Pontifical jurisdiction, as well as those who commanded them, namely, instigators, helpers, advisors, adherents, executors, etc., are to be considered, according to the most ample faculties granted to the Confessors, as having fulfilled the conditions for the Jubilee, according to the indicated Apostolic Letters, of December 8, 1864, and of November 20, 1846, and the aforementioned reservation made on March 26, 1860, is to be removed."

After a report on the above was presented to His Holiness, Pope Pius IX, He responded, according to His own judgment, as follows:

I. Regarding the question of whether, even if there is a necessity for using dairy products, the Lenten fast suffices to fulfill the double penance. Answer: Affirmative.

II. Regarding the question of whether the same applies to other fasts. Answer: Affirmative.

III. Regarding the question of whether the same applies to fasts prescribed for other reasons. Answer: Affirmative.

IV. Regarding the question of whether the same applies to fasts prescribed for other reasons. Answer: Negative, and recourse must be had to the local Ordinaries, who will provide according to the Instructions.

Given in Rome, in the Sacred Penitentiary, on January 20, 1865.

A.M. CARD. CAGIANO

M. P. G. BALLABATIS, Secretary.

Therefore, in response to the first question, according to the new Indult

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of His Holiness: "even if there is a necessity for using dairy products, the Lenten fast suffices to fulfill the double penance," the following question was further asked: "Can this same response be applied also to fasts that take place outside of Lent, so that through the prescribed fast, for example, during the four years or on the eve of a Saint, one can also fulfill the fast prescribed for obtaining the Jubilee Indulgence?"

After this doubt was reported to His Holiness by the Sacred Penitentiary on April 28, 1865, His Holiness graciously granted that, if a fast has already been prescribed by the Church for other reasons, it can also fulfill the fast prescribed for obtaining the Jubilee.

The words of the Rescript are: "We graciously grant, for the purpose of fulfilling the double penance, only."

In this Rescript, it is worthy of note that adverb "only," by which it is indicated that His Holiness did not intend to grant, for such fasts, the use of dairy products, as He had granted at the time of Lent.

[*Latin ed. p. 176*]

176 NEW INDULGENCES CONCERNING THE JUBILEE. <Lent. Since, through fasts which occur during the Lenten season, in Vigils, etc., everyone can satisfy the prescribed Jubilee fasts, nevertheless, the use of dairy products is prohibited. Therefore, if in any Diocese necessity demanded the use of dairy products, a special Indult would have to be requested from the Holy Father, who, otherwise, through the Holy Penitentiary, has already granted similar graces in other cases (1). Furthermore, other questions were proposed in Italian, which, translated into Latin, are as follows: I. "Whether all the prescribed works, or at least some of them, must be performed within a single week of the prescribed month, or whether all can be completed on any days of the month, as each faithful person prefers." II. "Whether, in the fasts imposed as prescribed works, one can use a privilege granted by the Bulla Cruciata." III. "Whether, with regard to the faculties of absolution, there are any limitations other than those made in the Brief which begins with 'Arcano,' and whether one can be absolved from heresy openly declared, and whether the obligation of denouncing heretics and their supporters ceases." IV. "Whether, if a just cause arises for changing the prescribed works, such a change can be made outside of the act of sacramental confession." The Holy Penitentiary, having carefully considered the questions proposed, responded as follows: To I. The prescribed works can be completed within the month, except for the fast, which must be completed within the space of one week of the said month, and on the prescribed days. To II. Negatively. To III. In the present Jubilee, the faculty of absolution is not granted for censures incurred by usurpers of the status of the Holy See, for which recourse must be made to the local Ordinaries, who will provide according to the instructions, from the declaration of the Most Holy Pope Pius IX; and, if in any Diocese a suitable time did not

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exist for the celebration of the Jubilee with the sacred missions or spiritual exercises appropriately to be carried out for the greater benefit of the people, the local Ordinaries could request an appropriate extension of time from the Holy See by appealing to the Holy Penitentiary. We know that such extensions have been granted at the request of the Ordinaries, and indulgences.

[*Latin ed. p. 177*]

NEW INDULGENCES GRANTED. 177 cases in which absolution is indeed possible, but heretics and their supporters, and others, must be denounced according to law. Regarding IV. From the declaration made by the Most Holy Pope Pius IX, affirmative. Given in Rome, in the Sacred Penitentiary, on the 16th of March, 1865. T. A. M. Cardinal CAGIANO, M. P. I A. RUBINIS, P. Secretarius. B. S. CONGREGATION OF THE HOLY ROMAN AND UNIVERSAL INQUISITION. ENCYCLICAL TO ALL BISHOPS AGAINST THE ABUSE OF MAGNETISM. Thursday, July 30, 1856. 4 (? "In the General Congregation of the Holy Roman and Universal Inquisition, held in the assembly of S. Maria sopra Minerva, the Most Eminent and Reverend Cardinals throughout the Christian Republic, as General Inquisitors, having maturely considered the matters reported by men of worthy faith concerning the experiments of magnetism, decreed the issuance of these encyclical letters to all Bishops to restrain the abuses of magnetism. "For it has been discovered that a certain new kind of superstition has arisen from the phenomena of magnetism, in which, contrary to what would be fitting, certain individuals, not seeking to explain these things through the sciences of physics, but rather to deceive and lead astray men, claim that it is possible to detect hidden, remote, and future things through the art of magnetism, or through magic, especially through the use of women, who are entirely dependent on the will of the magnetizer. "Some responses have already been given by the Holy See regarding this matter in particular cases, in which these experiments are condemned as illicit, because they are ordered to achieve an end that is not natural, not honest, and not achieved through proper means; hence, in similar cases, see the Acts, volume I, page 12."

[*Latin ed. p. 178*]

178 ENCYCLICAL AGAINST THE ABUSE OF MAGNETISM. In Kosso, a decree was issued on Thursday, April 21, 1841. The use of magnetism, as it is explained, is not permitted. Similarly, the Holy Congregation deemed it necessary to prohibit certain books that spread such errors. However, because, beyond particular cases, a general rule was needed regarding the use of magnetism, the following was established on Thursday, July 28, 1847: "After removing all error, sorcery, explicit or implicit invocation of demons, the use of magnetism, namely, the mere act of employing physical means

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otherwise permissible, is not morally forbidden, provided that it does not tend towards an illicit end, or in any way be perverse. However, the application of purely physical principles and means to matters and effects that are truly supernatural, in order to explain them physically, is nothing but a completely illicit and heretical deception."

Although this general decree sufficiently explains the licitness or illicitness of the use or abuse of magnetism, human malice has grown so great that, neglecting legitimate scientific pursuits, people, driven by curiosity, boast of discovering some principle, causing great loss of souls and detriment to civil society. Hence, through somnambulism and what they call "clear intuitions," young women, through gestures not always modest, claim to see invisible things, and they dare to speak about religion, to evoke the spirits of the dead, to receive answers, to reveal unknown and distant things, and to practice other superstitious acts of this kind, thereby obtaining great gain for themselves and their masters through divination. In all of these things, whatever means they use, whether art or illusion, when physical means are employed to produce unnatural effects, it is found to be a completely illicit and heretical deception, and a scandal against good morals.

Therefore, in order to effectively restrain this wickedness, which is most harmful to religion and civil society, the pastoral solicitude, vigilance, and zeal of all Bishops must be aroused as much as possible. Therefore, to the extent that local Ordinaries, with the help of divine grace, can, through paternal admonitions, through severe rebukes, and finally through the application of legal remedies, as they judge expedient according to the circumstances of the place, the persons involved, and the time, they must devote all their efforts to suppressing and eradicating such abuses of magnetism, so that the flock of the Lord may be preserved.

[*Latin ed. p. 179*]

ENCYCLICAL CONCERNING THE ABUSE OF MAGNETISM. 179 Let the deposit of the faith be defended from the enemy, let it be sewn, covered, and guarded, and let those entrusted with the faith be preserved from the corruption of morals. Given in Rome, in the Chancery of the Holy Office, at the Vatican, on the 4th of August, 1856. V. Card. MACCHI. FROM THE HOLY CONGREGATION OF INDULGENCES, OF THE CITY AND THE WORLD. On the 26th of September, 1864. DECREE. — "Since there is no other name under heaven, in which we must be saved, except the name of Jesus, in which is life, salvation, and resurrection; through whom we are saved and delivered; therefore, Sixtus V., of blessed memory, Supreme Pontiff, on the 11th of July, 1587, in the Bulla *Reddituri Indulgentiam*, granted fifty days of indulgence to all and each of the Christian faithful who, in any language, should greet each other with these words: "Praise be Jesus Christ," or respond "Forever," or "Amen," or "Always," and truly,

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to those who have this praiseworthy custom, if they invoke the name of Jesus, either with their mouth, or with their heart (if they cannot with their mouth), then to them is granted this indulgence. "Later, in some places, when the custom of greeting each other with the name of Jesus had become established, it was added, 'and also the name of Mary.' Therefore, Pope Clement XIII, in response to the most humble petitions of the General Order of Carmelites, graciously granted, through a Decree on the 8th of November, 1762, the same fifty days of indulgence to the Carmelites whenever they use these words in their mutual greeting: 'May Jesus and Mary be praised.' "Now, Our Most Holy Lord, Pope Pius IX, having listened attentively to the prayers of some Bishops, and at my request, as Cardinal Prefect of the aforementioned Holy Congregation of Indulgences, in an audience on the 26th of September, 1864, so that the faithful..."

[*Latin ed. p. 180*]

180 DECREE OF THE URBAN AND UNIVERSAL CHURCH. In order that both the names of Jesus and Mary may receive salutary effects, and that these names may be frequently retained in the mouth and heart, the same concession is extended to all and each of the faithful, so that those who, when greeting each other, use this formula in any language, such as: "Sia lodato Gesù e Maria" (Praise Jesus and Mary), or respond: "Oggi e sempre" (Today and always), or with similar words, may obtain and be able to enjoy the same Indulgences which are mentioned in the aforementioned Bull.

Among other customs introduced in Christian society which have arisen from the manner of thinking and feeling, there is also one in which the faithful wish each other good fortune by speaking in certain ways, and by using formulas similar to those used by the Gentiles when greeting each other. This is evidenced by the ways of greeting that have appeared in various languages, and which have replaced the formulas accepted among the Latins, such as "vale" or "salve." Among such formulas of greeting, there is also that in which the holy name of Jesus Christ is praised. In order that this pious custom may be promoted, the Roman Pontiffs have been concerned, and have enriched it with Indulgences. This was done by Sixtus V, Benedict XIII, and Clement XIII. It is fitting to bring to light the decree of September 5, 1759, which concerns these Indulgences granted and confirmed. "His Holiness Sixtus V and Benedict XIII, to all the faithful who, when greeting each other, say 'Sia lodato Gesù Cristo' (Praise Jesus Christ) and respond 'Amen,' or 'In saecula' (forever), whether in Italian or Latin, or in any other language, grant, whenever they do so, an Indulgence of fifty days, and to those who devoutly invoke the Most Holy Name of Jesus and Mary, an Indulgence of twenty-five days. To those, however, who are accustomed to doing this, if they are placed at the point of death and, with their mouth, or if they are unable, at least with their heart, invoke the Most Holy Name of Jesus, they are granted, in addition, a plenary

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Indulgence. These same Indulgences are granted to Preachers who, when preaching, have encouraged their listeners to greet each other, as has now been explained, by praising the Most Holy Name of Jesus, and to devoutly invoke the names of Jesus and Mary, and to all others who take care to use this form of greeting. Furthermore, to those who recite the one hundred and twenty-five Litanies of the Blessed Virgin Mary, an Indulgence is granted. When, however, humble supplication was made to the Most Holy Pope Clement XIII, that he would deign to confirm all the Indulgences mentioned above, His Holiness, graciously granting the prayers, confirmed the same Indulgences with Apostolic authority. Given on September 5, 1759. Fr. I. Card. Portocarrero, Prefect of the Congregation, Vicecomes S. Congr. Secret.

If it was fitting that such pious customs should be promoted in the past, it is to be considered even more fitting in these present days. For we live in an age in which enemies of the Christian name strive with all their might to remove from civil society all those Christian customs which are certain manifestations of the inner faith, and they strive to banish the heavenly religion entirely from society, and to relegate it, as it were, to the shadows, hidden in the corners of society.

[*Latin ed. p. 181*]

DECREE OF THE URBAN AND DIOCESAN HOLY OFFICE. His Holiness desired that perpetual suffrage be granted without any brief expedition. Given in Rome, from the Secretariat of the aforementioned Sacred Congregation for Indulgences and Sacred Relics, on the 26th of September, 1864.

Fr. ANTONIUS M. Card. PANEBIANCO, Prefect.

In place of the Signature.

A. COLOMBO, Secretary.

It is known that, by this method of acting, certain men have already reached such a point that some pious customs, where they flourished most, have almost become obsolete, such as the public greeting of the Most Holy Virgin at fixed hours, with a bowed head, reciting the angelic salutation. And other similar things, which are omitted, are today being erased by many imprudent faithful, as if they were uncivil, namely those mutual greetings with which the faithful joyfully and pleasantly announce to each other the blessed days of Easter and the Nativity. Therefore, according to the custom of the Holy See, and also as the most holy men (such as Blessed Simon de Roxas) induced such pious customs even in the court of Philip III, King of Spain), it would be well if those, especially those who are concerned with the care of souls, would strive to ensure that where such customs are found to be declining, they are revived; where they persist, they are promoted; and where they have been extinguished, they are, as

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far as possible, reintroduced.

[*Latin ed. p. 182*]

182 APPENDIX VII. CONCERNING THE GRANTING OF A DISPENSATION FROM THE NULLITY OF MARRIAGE AT ITS ROOT. The accuser, as we explained above on page 129, vigorously defended the cause of the man, arguing against the validity of the marriage. The defender, on the other hand, strenuously maintained the validity of the marriage, and even petitioned the Holy Congregation, striving to demonstrate that the accuser, in this difficult matter, was attempting to introduce doubts that were grave and pertinent to the present case, doubts that the parties in dispute had already discussed, in order to obtain a dispensation for the healing of the marriage. He explained that, if a decision unfavorable to him were to be rendered, he would certainly be able to bring the case of the woman before the Holy See, seeking a dispensation from the nullity of the marriage at its root. Therefore, from this supplication, it can be understood that the woman, through vehement and amorous letters, had incited the man to enter into the marriage; hence, to the Holy Congregation, the following doubts should have been presented: "Does it appear that the marriage is null in this case?" "And to this, affirmative." "Should the Most Holy [Father] be consulted concerning a dispensation from the nullity of marriage at its root in this case?"

Regarding the second formula for debate, it should be observed that it is customary in the Holy Congregation to ensure that two distinct doubts are presented, which are to be resolved in this manner: "Does it appear that the marriage is null in this case?" "And to this, negative." "Should the Most Holy [Father] be consulted concerning a dispensation regarding a marriage that has been contracted but not consummated in this case?"

Therefore, in accordance with these formulas, it was possible for the woman to resist this dispensation; however, in order to avoid public scandal and to assist the man in these circumstances, it was necessary to...

[*Latin ed. p. 183*]

APPENDIX VIII. 183. The Defender argued that, at least in the present matter, it should not be customary to grant dispensations in cases of marriage, when one party, knowing of the nullity of the marriage, seeks a concession. He maintained that shame should not obstruct the freedom and the power to grant a dispensation. For, indeed, grave reasons were present in the cause, which suggested that a dispensation should be granted, although he could not, nevertheless, concede it. He argued that the Roman Pontiff could heal a marriage contract, even though one of the spouses, knowing of the impediment, had not repented of it. To this, he requested that further assistance be given; but, having reserved the ultimate decision to himself, he nevertheless recited the doctrine concerning the healing of

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marriage, which had been explained by the learned Father Perrone in his work *De Matrimonio Christiano*, part 2, section 1, article 1. It is fitting, above all, to consider the doctrine expounded on this matter by Benedict XIV in *Potestas libera*, book 4, book 13, chapter 22, number 7. There, it is written: "Although in certain circumstances, certain dispensations are granted, which are said to be *ad radicem* [to the root], so that the necessity of obtaining a new consent for the marriage is removed, as the authors teach, and as the Sacred Congregation [Sacra Congregatio] declared on the same day, December 5, 1863, 'for this very reason, the first proposal was to grant a dispensation *ad radicem* matrimonii, through which the marriage would be renewed,' nevertheless, it is observed in the Apostolic letters of Clement XI and Clement XII, which were recently published, that..."

From this response, you can already discern that it is the practice of the Holy See to, when prayers are not heard, dismiss the petition with the phrase "lectum," for this signifies that the petition was indeed received, but was not found worthy of a response. This phrase corresponds to that which we mentioned above on page 144 in the note. When prayers are presented to the Holy Father and dismissed without a favorable outcome, it is customary to respond with "relatum," as is done in the Sacred Congregation.

[*Latin ed. p. 184*]

APPENDIX VIII. § 142, paragraph 3, volume 14. We have found in the archives of the "Bullarii" a case from Prague. A marriage was proposed on July 13, 1720, and finally settled on September 18, 1723. To clarify this requirement for obtaining a dispensation in the root of the marriage, and so that the offspring born from it may be considered legitimate without any need for renewal, we refer here to the following case. William petitioned Clement XI for a dispensation in the root of the marriage, in order to legitimize three children. He claimed that he had contracted a marriage with a certain Ludmilla, with whom he had lived for more than 40 years, but that the marriage was invalid. He asserted that he had not had any surviving children from that marriage before the birth of these three children. However, he presented these children before a priest, but before another priest, without any fraud, and to whom the Supreme Pontiff had granted the power to legitimize. It was not a matter of making the marriage valid, which would have been a different matter, but rather of declaring that the marriage had not been validly contracted, so that the children would not be considered illegitimate. The local lord had the right to present the priest; and so that he could not object, or claim that there was no reason for granting this great favor, or that the necessary conditions had not been met, laws were cited, namely, "Concerning the immunity of the churches." From this doctrine, it is clear that, in Bohemia, according to the laws of the Kingdom of Bohemia, if a marriage is considered invalid for reasons of an ecclesiastical impediment, the children born from it are excluded from

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the possession and inheritance of goods in the said kingdom, so that if a dispensation in the root of the marriage is not obtained, their own goods, without any doubt, and excluding their own children, would be transferred to others; and these children, although considered legitimate up to that point, would remain in disputes and enmities if they were discovered to be illegitimate.

[*Latin ed. p. 185*]

XVIII. 185. And he, with great and well-founded concern, turned his attention to William; for it had come to light that William, in fact, had contracted marriage, not with a common woman, but with a noble woman, with whom he had also, before a priest, celebrated the marriage, and had children. Therefore, he concluded that, since William did not reveal his name, and since no witnesses to the marriage could be found, and since there was an urgent reason to investigate the matter, and since Ludmilla had always been considered a concubine, and not the wife of a valid marriage, so that warnings had been given to her to leave, or to be received into marriage, and since all these things were required by the law of the Church, he, William, had, as far as he could, sought to conceal this situation from the Bishop, and the cause was brought before the Sacred Congregation. On July 13, 1720, the Perpetual Penitentiary [Rota] gave an opinion, as is recorded in *Disp. de Benefic. part. 2, cap. 462, dec. 2, n. 174*, concerning the question "whether it is permissible to grant a dispensation in the root of marriage in such a case," and the response was: "Before the Sacred Penitentiary, the proofs were presented by Farina, Seraphino, and others; the legitimate children were shown to be 455, and the total number of children was 1121, all of whom were fully recognized; and they were assisted by witnesses, according to the instruction."

Regarding the procedure for this rescript, it was stated in paragraph 2 that the dispensation in the root of marriage, according to which witnesses were to be formally examined, was to be properly carried out, so that it would be effective to declare the children legitimate, capable of inheriting, and able to contract marriage, even in lands subject to the Holy See.

From the aforementioned dispensation, the ecclesiastical law that imposed an impediment was abrogated, and the same was applied retroactively to the beginning of the marriage, so that the Holy Pontiff could invalidate and revoke the ecclesiastical law, not only with regard to the effects in the future, but also with regard to the effects that had previously occurred, according to the text.

In this connection, the Sacred Congregation, after again considering the matter before the aforementioned doubt, responded negatively, concerning the immunity of the churches.

The Bishop was heard on these matters for information and a vote, and

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it was stated that there was an external reason for the marriage.

[*Latin ed. p. 186*]

APPENDIX VIII. concerning the true nature of marriage, and it should not be excluded, but rather manifestly declared to be unlawful. Thus, the soul of one of the parties would not attain salvation.

On this occasion, during the aforementioned instance, it was suggested by one of the Cardinals that a dispensation from marriage might be granted, even after the death of one of the spouses, if sufficient information could be obtained regarding the lives of William and Ludmilla, as evidenced by Barbosa, *De voto*, book 1, chapter 27, and by William, *De frequentia Sacramentorum*, part 1, chapter 11, and by Bota, *Decisiones*, 455. This was because it appeared implausible that these Christians had lived such lives, frequently receiving the Sacraments, and that their marriage was not, in fact, valid. Therefore, the doubt was raised: "Should we adhere to, or depart from, the decisions of January 16, 1723, in this case?" The Sacred Congregation responded on September 18, 1723: "Given that a new audience has been granted, and considering the evidence presented concerning the commendable life of William and Ludmilla, their frequent reception of the Sacraments, their good reputation as a married couple, and that it has been noted that William, while these matters were being considered, wrote about his children in his will, asserting that they were legitimately born, and that he had been married to Ludmilla for forty years before a priest in the church of Tman, it is clear that the marriage was not manifestly unlawful; furthermore, it is also granted when at least one of the spouses, knowing of the nullity of the marriage, does not claim it. And further, after a sacramental confession, it is granted in the case where one spouse knows of the impediment to the marriage and the other does not, even if it is certain that if the other spouse knew of the impediment, he or she would have formally repeated the marriage vows, as William did before the priest, and other witnesses testified, forty years ago, fully intending to consummate the marriage. Indeed, even if the spouse who is ignorant of the impediment does not wish to cohabit and thus seeks a separation, whether complete or partial, he or she may do so, as happens when there are legitimate reasons."

[*Latin ed. p. 187*]

APPENDIX VIII. 187. Husbands and wives are sometimes separated without the consent of the wife, and the nullity of the marriage is declared; or, even if the marriage appears valid, a dispensation may be sought to declare the marriage null and void, due to a presumed impediment that remained in force even after the concession of the dispensation, provided that, after the concession, knowledge of the impediment reached the wife. However, if someone to whom it pertains, having discovered the

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impediment affecting the wife, prays for this dispensation, and urgent reasons are present, this dispensation may be granted, even if the wife had previously argued for the nullity of the marriage on another ground, namely, the discovery of the impediment of consanguinity.

It is well known that this occurred during the pontificate of Pope Benedict XIV, and is referred to in the *Tenerone* sentence, where the wife, Violantes, obtained a victory for the nullity of the marriage. The Religious, Father Benedict XIV, vigorously demonstrated the nullity of the marriage, and the words contained in the sentence are as follows: "From these facts, it is inferred that a new grace (dispensation in the root of marriage) was granted under the assumption that Violantes, at the time of the concession, was ignorant of the impediment descending from a double degree; and all the more so, since in the same decree it is stated that the grace should remain in full force, if after the concession, knowledge of the impediment reached Violantes; which circumstance clearly demonstrates and confirms that the grace was granted under this assumption. Furthermore, the grace granted implies a dispensation from the root of the marriage, which is customarily granted by the Roman Pontiffs when it concerns an impediment to marriage that arises not from divine or natural law, but from ecclesiastical law, and it is not subject to the condition that the marriage be valid."

However, the husband, Violantes, subsequently learned of the impediment of consanguinity for which the marriage was deemed invalid. Fearing that scandals might arise if this knowledge reached the wife, he obtained a dispensation from the Holy See for the marriage, for urgent reasons, and he obtained this dispensation in this manner. For the decree was made in which it was stated: "It is not necessary for a new consent."

[*Latin ed. p. 188*]

188 APPENDIX VIII. "A marriage nullified is not nullified in such a way that a new dispensation of grace cannot be granted; rather, the effects of such a dispensation are removed, provided that no knowledge of the impediment leading to the nullity has arisen after the concession of the brief, since that dispensation, once granted, produces effects even in the very act of contracting the marriage, which is subject to the impediment.

Furthermore, while it is the sole prerogative of the Roman Pontiff to grant dispensations in the root of Matrimony, it is also permissible for him to establish conditions for fulfilling the requirements of grace; in the matter under discussion, a certain condition can be stated, namely, that at the time of the concession, the violation of the marriage is known.

If the Holy Father, directly or indirectly, were unaware of a new impediment, then, even though it contradicts and opposes the dispensation, the mutual consent by which the marriage was initiated could have the effect that the first act, as if the impediment were known, would lose its force through the subsequent ratification by the Holy Father. In this matter, it has

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been established that whatever is done or granted, whether presumptively or actually, must be done in such a way that the validity of a marriage that has been approved cannot persist; nor is the woman deprived of the power to challenge the validity of the marriage on a new ground, if new knowledge of the impediment arises at the time of the concession.

We leave this question to others to resolve, as it does not pertain to the matter at hand (1).

(1) Although we set aside the question discussed above, we note that the particular case referred to by Bolgenio does not seem sufficient to resolve the issue. He recounts a certain woman who was informed by the Bishop of Falchi, Scipione Ricci's successor in the diocese of Pistoia and Prato, about the nullity of her marriage, because the dispensation granted by her predecessor over the impediment of nullity was of no value. She refused to renew her consent. The Bishop tried to induce her to renew her consent in the best way he could; but in vain. He frightened her with the threat of ecclesiastical penalties, but to no avail. When the Bishop sought a remedy from the Holy Father, Pope Pius VI, Bolgenio recounts that he gave advice to the Holy Father to heal the matter at its root, and that it was healed according to his advice. Such a case, among others, should not be given more weight than the authority of Bolgenio himself. For not all the details of this case are known. One or another circumstance that

[*Latin ed. p. 189*]

APPENDIX VIII. 189 Therefore, considering the aforementioned disposition by which a certain matter is revoked, it will not be the Constitution of Boniface, and whatever was inquired about, in which the nature of that dispensation was situated, and whatever followed from it, as if the Constitution and the nature of this dispensation did not exist, the Glossa states the word: "The Doctors generally seem to have understood it thus: 'excommunicatus ex viribus illius Constitutionis' [excommunicated by the power of that Constitution], which I believe means that the 'Constitution (of Boniface) does not require absolution,' and see how the Doctors understand this from what is read in the Clementine Decretal: 'Quoniam quia immunitate ecclesiarum. Bonifacius VIII, by a new sanction, forbade the secular power to impose taxes and other burdens on ecclesiastical goods, revoking that which permitted it until then.' Therefore, according to the norm of this revoking Constitution, the Authors understand that the revocation takes place, when, in the granting of a dispensation from marriage, if it were otherwise, then those who demanded the taxes, and those who paid them, would be excommunicated. Furthermore, the Pontiff, in particular cases, namely, by this dispensation, impedes the impediment of the law, so that it is as if they were not subject to the law. Therefore, from this new sanction and from those things that followed from it, whatever followed from it, or because of it, which is detrimental to the Church, and which might lead

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to greater evils, should be considered as if it had never existed. Therefore, marriage presently receives force through this revoking law, so that whatever followed from it, or because of it, is considered as if it had never existed. Clement V, in the Council of Vienna, used a similar expression, by which he revoked what was an impediment to the ecclesiastical immunity, namely, the statutes that were already in existence, and abrogated the Constitution of Boniface in this way: "We, with the counsel of our Brothers, therefore, all the acts and declarations, or indirectly, that incite to those statutes, we completely revoke, and we wish them to be considered as if they had never existed." From this, it is sometimes omitted, a difference is made between the revocation made by Clement and the one made by Boniface, so that the case may take on a new aspect which it did not originally have. And in the present matter, neither is that author to be blamed who, concerning the aforementioned fact, did not himself make it public, but it remained hidden in his manuscripts, nor is he to be blamed concerning the doctrine, but rather he deserves full credit in all things.

[*Latin ed. p. 190*]

190 APPENDIX VIII. Regarding the dispensation from impediments and the revocation thereof, it is said that the dispensation is legitimate when it is granted with the revocation of the impediment – through a subsequent marriage. It is understood that in such a case, the marriage is considered valid, because, according to the Clementine decrees, when a dispensation is granted, all the effects produced by the impediment, either by law or as if by law, are removed, except for the desire for freedom. From this, it is understood that the dispensation is not granted with a new consent, but with the revocation of the impediment arising from the prior consent; therefore, the condition is lacking. From what has been said, it is understood that a new consent is not required for the marriage to be valid, when the dispensation is granted, because the natural law, which was present from the beginning, is sufficient to make the marriage valid, as if no impediment existed, provided that all the requirements of the law of marriage are fulfilled, by which the marriage can be revived. These requirements are those of natural law, namely, the mutual consent of the parties, which, if the law of the Church had not intervened, would have constituted a valid marriage; thus, the marriage is contracted by the force of natural law; the second requirement (at least according to the understanding of marriage) is that the parties, having entered into the marriage with the intention of persevering in the marital state, do not seek a dispensation, or, if they are aware of the impediment, they do not seek a dispensation to remain in the marital state in good faith, having entered into the marriage with the intention of persevering in it. If these conditions are present, and the impediment is removed, the marriage is considered valid, according to the terms of natural law. Therefore, through this type of dispensation, the law

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prohibiting the marriage is directly revoked, and two principal effects are regularly derived: the first is that the Holy See does not grant a dispensation to those who are only living together, among whom there is no hope of a true marriage; the second is that the legitimacy of the children born from such a union is not established. I have said "regularly," because there are cases in which one or the other effect may not occur, due to a defect in the matter. Thus, if the children are not legitimate, they have no remedy other than to contract a subsequent marriage, through which the children will be legitimized.

[*Latin ed. p. 191*]

IX, VIII, 1, 91: It is alleged that, if the legitimization [of children] was lacking, it would have been necessary to have previously provided for it; likewise, if this dispensation [from a matrimonial impediment] approves [the marriage] and confirms that it was valid from the beginning, and that it is not necessary in this case for a new consent [from either party] to be given after the death of one of the spouses, for the marriage to become valid, but that the natural [consent, which in some way persists] is sufficient; for in this case, the law prohibiting [the marriage] is revoked, so that from that time on, all other effects are produced that it could produce; such as the legitimization of children, whose parents are considered by the law as if they were true spouses. If what we have explained above requires further clarification, the doctrine of the Holy Roman Rota is available. In decision 455, recent, part I, the following is stated: "It is certain that the Pope can undoubtedly remove such a legal impediment and dispense in the root [of the marriage], approving it as we have expressed, and thus not granting a dispensation as if a new consent were required from the beginning, but rather as if the first marriage were valid from the beginning." Furthermore, in decision 607, part 2, recent, it is stated: "Nullity having intervened according to the most accepted opinion of J.A. [Juris Consulti], and for this reason, the text is interpreted according to the gloss in 'De immunitate ecclesiae' in Clementina." Moreover, the Holy Roman Rota argues that a change of mind or a mutual consent does not flow into the act [of marriage], namely, that the marriage is impeded by such a consent; it adds, "the reason is because the Pope, by dispensing, allows the spouses to remain in the marriage, which was never validly contracted, and with regard to its essence, it is complete and capable of producing such effects; therefore, the first consent is not necessary, so that it may be produced; from this, it follows that..."

[*Latin ed. p. 192*]

I. OBSERVATION. Most esteemed Readers, whoever you may be, and whatever reasons may have led you to take a greater interest in this publication, you must understand that no one can, through their own under-

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standing or experience, discern the method by which we follow the doctrine entrusted to us by the Most Holy Congregations. We assure you of its authenticity. Indeed, we choose this method above others, because it renders the judgment of causes, however complex they may be, clearer and more useful. While the reasons for deciding have the most profound wisdom, they are not always readily disclosed.

To achieve this objective, in addition to a synopsis of the facts and an exposition of the law, we also usually add a certain discussion, so that what is manifest may be made even clearer. We present all the heads of doctrine, whether they concern principles, practices, or theoretical matters, which, beyond the Resolutions, have value in themselves. These are usually drawn from those legal principles which are set forth in the discussion, and which are often the most accurate and insightful. Sometimes, however, we believe that they can be deduced from the narration of the facts and the corresponding resolution of the question. We have taken care to bring this to the attention of those who, in the practice of the Most Holy Congregations, are not always well-versed.

[*Latin ed. p. 193*]

193 FROM THE ACTS OF THE MOST HOLY DOMINICAN ORDER, THE ADDRESS GIVEN BY OUR MOST HOLY FATHER POPE PIUS IX, BY DIVINE PROVIDENCE, IN A SECRET CONSISTORY ON THE 25TH DAY OF SEPTEMBER, 1865. VENERABLE BROTHERS: "Among the numerous plots and machinations by which the enemies of the Christian name seek to attack the Church of God, and with a deceitful effort to undermine and sever it from its foundations, it is certainly necessary, Venerable Brothers, to mention that perverse society of men, commonly known as Masonry, which, having been hidden for a time, and then forcibly brought together for the common ruin of religion and of society, has now emerged. When Our Predecessors, the Roman Pontiffs, first detected the intrigues and deceptions of this sect, mindful of their pastoral office, they considered that no delay should be allowed in restraining that wicked sect, which was plotting many and heinous things against the sacred and public good, and in condemning it with their authority, as if with a dart, so that it might be destroyed and overthrown. Indeed, Pope Clement XII, Our Predecessor, by his Apostolic Letters, condemned and rejected this same sect, and forbade all the faithful not only from joining it, but also from promoting, aiding, or supporting it in any way, under pain of excommunication, which would be incurred by the very act, and could only be remitted by the Roman Pontiff alone. Furthermore, Pope Benedict XIV confirmed this just and fitting sentence of condemnation with a Constitution, and did not fail to urge the highest Catholic Princes to exert their efforts to eradicate this most pernicious sect and to drive it away from the common danger." *Acta, vol.

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I, p. 13*.

[*Latin ed. p. 194*]

194 ADDRESS OF HIS HOLINESS, POPE PIUS IX, to all, and concerning all matters. Oh, that the same supreme Princes had heeded the voices of Our Predecessor; oh, that they had acted with less delay in so grave a matter, so that they would never have been lamented for the seditious movements, the terrible wars, with which all of Europe was inflamed! And finally, for the bitterness of so many evils with which the Church is afflicted, and still is afflicted. Indeed, when the fury of the wicked showed no sign of abating, Our Predecessor, Pope Pius VII, condemned with an anathema the recently arisen sect of the Carbonari, especially in Italia, and with equal zeal, Pope Leo XII, condemned by his Apostolic Letters those secret societies mentioned above, as well as any other societies whatsoever, by whatever name they might be called, which conspired against the Church and civil authority, and forbade all the faithful under the gravest penalty of excommunication. However, these efforts of the Apostolic See did not have the outcome that might have been expected. For that Masonic sect, of which we speak, was never subdued or restrained, but rather it spread far and wide, so that at this time it can freely flaunt itself everywhere among the nations, and acts with greater audacity. Therefore, We believe that it is largely due to the fact that, perhaps through ignorance, a false opinion has taken root in the minds of many that this kind of society and institution is harmless, and that it is solely concerned with helping people and relieving their misfortunes; and that nothing should be feared from it with regard to the Church of God. But how much does this differ from the truth? What does this gathering of people of any religion and faith intend? What do these secret meetings intend? What does the most severe oath mean, which is given to those who are initiated into this sect, that they will never reveal anything that pertains to it? And what does the unheard-of severity of the punishments mean, to which they devote themselves, if they should break their oath? Surely, this is a wicked and nefarious society, which so greatly fears the light of day; for, as the Apostle wrote, he who does evil hates the light. Indeed, how different are the pious societies of the faithful, which flourish in the Cattolica Church. In them, nothing is concealed or hidden.

[*Latin ed. p. 195*]

ADDRESS OF HIS HOLINESS POPE PIUS IX.

19. To all, the laws by which they are governed are clear; likewise, the works of charity that are exercised according to the doctrine of the Gospel are clear. Yet, We see, with sorrow, that Catholic sodalities of this kind, which are so salutary, so conducive to piety, and so opportune for assisting the poor, are attacked in some places, and indeed are even destroyed; while,

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on the other hand, the insidious Masonic society, so inimical to the Church of God, and so dangerous even to the security of kingdoms, is fostered, or at least tolerated with leniency!

This, Venerable Brothers, We bear with great sadness and indignation, because We see that, contrary to the Constitutions of Our Predecessors, some are slow, and as it were, slumbering, when the reason of the duty and office entrusted to them demands that they be most zealous in this very grave matter. And if anyone holds the opinion that the Apostolic Constitutions against secret societies, and their adherents and supporters, published under pain of anathema, have no force in those regions where the aforementioned societies are tolerated by civil authority, they are certainly greatly mistaken; and We, as you know, Venerable Brothers, have already condemned and rejected this erroneous doctrine, and We condemn and reject it again today.

For, indeed, does not the supreme power of feeding and governing the entire flock of the Lord, which the Roman Pontiffs have received from Christ the Lord in the person of Blessed Peter, and which they are therefore bound to exercise in the Church, depend on civil authority, or can it be in any way constrained or restricted by it? Since this is so, lest the faithful, and especially the young, be deceived, and lest any opportunity be taken to spread error from Our silence, We have decreed to raise Our Apostolic voice, Venerable Brothers; and here, in Your presence, confirming the aforementioned Constitutions of Our Predecessors, We, with Our Apostolic authority, condemn and reject that Masonic society, and other societies of the same kind, which, though outwardly different, are constantly coalescing, and which, whether openly or secretly, plot against the Church or legitimate authorities. We will that all the Christian faithful, of whatever condition, rank, or dignity, and wherever they may be on earth, consider these societies as rejected and condemned by Us, under the same penalties that are contained in the aforementioned Constitutions of Our Predecessors.

Now, finally, with the solicitude of a paternal heart, We admonish and exhort the faithful, who...

[*Latin ed. p. 196*]

96. ADDRESS OF HIS HOLINESS POPE PIUS IX. May such sects have given themselves such names, that they may return to sounder counsels, and abandon those harmful groups and assemblies, lest they fall into the abyss of eternal ruin; and we earnestly exhort all the faithful, because of the concern we have for the salvation of souls, to beware of the deceitful words of those sectarians, who, under the guise of some semblance of honesty, harbor a burning hatred against the religion of Christ and legitimate authority, and who seek and strive only to undermine all rights, both divine and human. Let them know that these groups of sectarians are like

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wolves, as foretold by the Lord Christ, who, clothed in the skin of sheep, are destined to lead the flock to destruction; let them know that, as the Apostle forbade us to have any dealings with them, forbidding us even to say "Ave" to them. May the God of mercy, whom we implore in our prayers, grant that, with the help of His grace, the erring may return to their senses, and those who are wandering may be brought back to the path of justice; may He grant that the Church and human society may one day be freed from the fury of those learned men who, through the aforementioned groups, are engaged in impious and nefarious undertakings, and who are afflicted by so many and such deeply rooted evils. That these things may come to pass through our prayers, let us invoke the most holy Virgin, Mother of God herself, conceived without original sin, to whom it has been given to crush the enemies of the Church and the monsters of error; and let us also implore the patronage of the Blessed Apostles Peter and Paul, by whose glorious blood this venerable City was consecrated. With their help and assistance, which we implore from divine goodness, we confidently hope to achieve [our aims].

[*Latin ed. p. 197*]

197. PAPAL ELECTIONS. In the same secret Consistory, Our Most Holy Lord, after delivering an address, consulted regarding the governance of the following churches, through the nominations of the individuals listed below. To the cathedral church of Segorbe in Spain, the Reverend Joachim Hernández y Herrero, transferred from the episcopal see of Badajoz. To the cathedral church of Namur in Belgium, the Reverend Victor August Isidore Dechamps, a priest from the diocese of Gand, already a Provincial of the Congregation of the Most Holy Redeemer, and a doctor of Sacred Theology. To the cathedral church of Olinda in Brazil, the Reverend Emmanuel do Rego de Medeiros, a priest from the diocese of Fortaleza, a student of the American-Latin College in the City, and a doctor of Canon Law. To the cathedral church of Armenopolis, or Szamos-Ujvar, of the Greek-Uniate rite in Transylvania, the Reverend John Vanesa, a priest from the diocese of Great Wardein, formerly the Inspector of those diocesan schools, a Canon and Singer in the same cathedral, and a doctor of Sacred Theology. To the cathedral church of Coria in Spain, the Reverend Stephen Joseph Perez Fernandez, a priest from the archdiocese of Granada, the Dean in that metropolitan chapter, and a doctor of Sacred Theology. To the canonically united cathedral churches of Calagurrita and La Calzada in Spain, the Reverend Fabian and Sebastian Arenzana, a priest from Calagurrita, holding the dignity of Singer in the metropolitan chapter of Toledo, and in the same metropolitan church, a General Vicar. To the cathedral church of Badajoz in Spain, the Reverend Ferdinand Ramírez y Vázquez, a priest from the diocese of Badajoz, a Professor of Sacred Theology in the episcopal seminary, a Canon and Lector in the same chapter, and a synodal examiner. To the

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cathedral church of Saint James the Greater, the Reverend Joseph Aloysius Alves Feijó, of the Order of the Most Holy Trinity.

[*Latin ed. p. 198*]

(98 ELECTION OF BISHOPS. To the dotem [clerical office] from the Diocese of Brigantia, a canon and singer in its cathedral chapter, and the General Vicar of that same diocese. To the cathedral church of Goyás in Brazil, by the Reverend Father Joachim Gonçalves de Azevedo, a priest from the Diocese of Belém do Pará, an archdeacon in its cathedral chapter, and the General Vicar of that diocese. To the episcopal church of Cydonia in lands among the infidels, by the Reverend Father Francis Joseph Yerovi, a priest of the Order of Saint Francis from the Archdiocese of Quito, already a capitular vicar of Guayaquil, a doctor in both laws, appointed coadjutor with future succession to the Archbishop of Quito, Joseph Maria Riofrio. To the episcopal church of Limyra in lands among the infidels, by the Reverend Emmanuel Ulloa, a priest from Nicaragua, already devoted to the care of souls in various parishes of that diocese, and appointed coadjutor with future succession to the Bishop of Nicaragua, Bernard Pinol. To the cathedral church of Sion in lands among the infidels, by the Reverend Joseph Durguth, a domestic prelate of His Holiness, a priest from the Archdiocese of Gran, an archdeacon in its metropolitan chapter, the General Vicar of that same Archdiocese, a doctor in Sacred Theology, appointed auxiliary to the Eminent Cardinal John Scitowszky, Archbishop of Gran. To the episcopal church of Europus in lands among the infidels, by the Reverend John Nepomuceno Arnberg, a priest from the Diocese of Brixen, a prelate with the privilege of Protonotary Apostolic in its cathedral chapter, the Rector of that seminary, the President of matrimonial causes, etc. After these, the Most Holy Father announced the following elections, completed by a Pontifical Brief, namely: The coadjutorship with future succession to the metropolitan church of Saint Faith in New Granada, conferred upon the Bishop of Maximopolis in lands among the infidels, Vincent Arbelaez, already the Apostolic Vicar of Saint Martha. The cathedral church of Neo-Pamplona in New Granada, conferred upon the Reverend Boniface Toscano. Similarly, he made public the elections already completed from the last Consistory to the present day by the Sacred Congregation for the Propagation of the Faith, namely:

[*Latin ed. p. 199*]

POPE'S APPOINTMENTS. i 90 The archiepiscopal Church of Tarsus, located in lands of the infidels, is conferred upon the Most Reverend Arsenius Angiarakian, a monk of the Armenian rite, who was already the Archbishop of Tokat degli Armeni. The Metropolitan Church of Westminster in England is conferred upon the Most Reverend Henry Edward Manning, a Prelate of His Holiness, Supernumerary Apostolic Protonotary, and

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Prefect of the same metropolitan church. The Church of the Bulgarians united with the Catholic Church is conferred upon the Right Reverend Bishop Raphael Popov, appointed Apostolic Administrator. The cathedral Church of Clogher in Ireland is conferred upon the Reverend James Donnelly, who was already a parish priest in that diocese. The cathedral Church of Nashville in the United States of America is conferred upon the Reverend Patrick Feehan, an Irish priest. The cathedral Church of Louisville in the United States of America is conferred upon the Reverend Peter Lavialle, a Frenchman, Superior of that diocesan seminary, and Rector of the College of Saint Mary. The cathedral Church of Albano Laziale in the United States of America is conferred upon the Reverend John Conroy, who was already the General Vicar, and the present administrator of that diocese. The Armenian rite Church of Karputhen, recently erected, is conferred upon the Reverend Stephen Israelian. The episcopal Church of Agatopolos, located in lands of the infidels, is conferred upon the Reverend Louis Bel, of the Congregation of Missions, appointed Apostolic Vicar of Abyssinia. The episcopal Church of Amory, located in lands of the infidels, is conferred upon the Reverend John Baptist Swinkels, of the Congregation of the Most Holy Redeemer, appointed Apostolic Vicar in Surinam. The episcopal Church of Sarepta, located in lands of the infidels, is conferred upon the Reverend Nicholas Power, appointed General Vicar and parish priest of Laon, as coadjutor to the Most Reverend Michael Flannery, Bishop of Laon in Ireland. Finally, the consistorial advocate, who had requested that His Holiness grant the sacred Pallium for the metropolitan Church of Westminster, received this response from His Holiness: "We shall grant it shortly."

[*Latin ed. p. 200*]

200 IX S, CONGREGATION! OF THE COUNCIL. DOUBTS CONCERNING INDULGENCES. May 6, 1820. Session 22, chapter 9, and session 24, chapter 12, concerning Reforms. Although this matter is somewhat older, nevertheless, since several doubts have been resolved concerning it, which establish the ordinary norm by which the Holy Congregation of the Council is guided in granting indulgences for legitimate absence from the choir, we have deemed it not fitting to pass it over. Summary of the matter. In order that the splendor of divine worship and the greater service of basilicas and collegiate churches might be promoted, Pope Innocent XII, of blessed memory, appointed a particular Congregation, which, after reviewing all indulgences, whether granted for reasons of office or of study, for exemption from choral service, proposed moderation, reforms, and even revocations, as seemed opportune. What the aforementioned Holy Congregation, composed of five Sacred Roman Cardinals and four Bishops, decided after mature deliberation, is evident from the following decree of May 2, 1693: "It was decided that, if it pleases His Most Holy Lordship, the indulgences concerning Apostolic Nuncios, as well as those

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intimate servants and those who serve the same Most Holy Lordship, and those under the Datary, and the Commissioners of the Apostolic Camera, should not be changed." "Concerning Governors, and Vice-Legates of provinces, civil and ecclesiastical authorities, who, during their absence, can never attend to the churches, and also the General Procurator of the mountains, and the servants of the Sacred Roman Cardinals, it was decided that, while remaining under the decree of the Sacred Congregation of the Holy Council of Trent, issued on August 19, 1690, they should be revoked; and it is to be decreed that they should not be granted in the future." "The indulgence granted to those serving in the Secretariat of the Congregation of Cardinals for consultations concerning the temporal jurisdiction of the same Sacred Roman Lordships, is to be reformed, and in the future restricted to those days and hours only."

[*Latin ed. p. 201*]

DOUBTS CONCERNING INDULGENCES. 201 "Those who, through some impediment, have been actually prevented from fulfilling this service, shall have their consciences strictly burdened."

Indulgences are to be granted solely for the purpose of obtaining spiritual benefits, and not otherwise for obtaining daily distributions, as is the case for churches whose revenues consist either solely of daily distributions, or of those same distributions together with some small fruits, provided that one-third is taken away to be added to the support of the clergy; nor are they to be granted for more than three years, nor for longer than twenty-five years; indeed, even if someone reaches the age of twenty-five years while holding such an indulgence, the same indulgence shall expire, even if that three-year period has not yet been completed.

All those who hold indulgences for specific days and hours, in which they have been prevented from actually performing their service in their duties or offices, are to be punished as many times as they have been absent from the Church or Choir, but in each week, such penalties may and should be remitted, or cancelled, for those only days and hours in which the holders of the indulgences have alleged particular impediments due to their said duties, their consciences being strictly burdened, and concerning the relevance of such impediments, the judgment of their own Vicar of any church is to be considered. In churches where such a Vicar is not present, the matter is to be referred to the judgment of a more worthy Canon.

The aforementioned resolutions, having been presented to the Holy Father on the B day of the same month and year, were approved by him; His Holiness approved them, and ordered that they be observed inviolably from the first of June of the coming year; all previous indulgences, whether granted by himself or by his predecessors, the Popes of Rome, in any way, and all other contrary provisions, are hereby superseded to the greatest extent for the purpose of observing the foregoing.

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As in human affairs (so it was added in the official document), it often happens that what was once established by wise counsel, with the passage of years, is either gradually relaxed, or even, with changing circumstances, seems less suitable; so it was also seen by the Most Holy Lord, so that exemptions from choral service may require the providence of the highest authority. Hence, emulating his predecessors in all things, in this also, the Holy Father, through his Reverend Father Auditor, has...

[*Latin ed. p. 202*]

202 QUESTIONS CONCERNING INDULTS. Thus, it was granted. "His Holiness desires that all Indults be reviewed," so that they may be confirmed, revoked, or reformed according to the rules then established and constantly thereafter observed and executed by the Sacred Congregation of the Council. However, it is not considered necessary to appoint another particular Congregation, but it is deemed that the same Congregation of the Council, precisely because it knows well the norms that must regulate Indults, and has constantly observed them, should itself call these [Indults] for examination and propose to the same Holiness which should be confirmed, which should be revoked, and which should be corrected according to the same norms." (1)

Therefore, the Most Reverend Archpriests and Titulars were requested to report on the Indults of their respective churches, and to submit the Indults themselves, from which a careful examination elicited the doubts which are presented below.

A synopsis of the discussion. It was proposed to the Reverend Fathers, by virtue of its established practice, the procedure followed by the Sacred Congregation of the Council in accordance with the law for granting such Indults. It was observed that Indults for exemption from the service of the choir, whether for days and hours due to the demands of their office, or for a certain time for the sake of preserving health, had always been granted, as testified by the Resolutions of the Sacred Congregation. And this does not contradict the law; for it is well known that the canon law prescribes in Chapter 1, concerning clerics who do not reside [in a particular place], in paragraph 6, that Boniface VIII., after forbidding clerics who reside [in a particular place] but do not participate in divine offices, excepted those who, due to infirmity,

(1) Thus, this will of the Holy Father was expressed in Italian, to which we have given the Latin version. "His Holiness desires that all Indults be called for examination, so that they may therefore be confirmed, revoked, or reformed according to the rules then established, and constantly thereafter adopted, and executed by the Sacred Congregation of the Council. However, he does not believe it necessary to appoint another particular Congregation, nor does he believe that the same Congregation of the Council, precisely because it knows well the norms that must regulate the In-

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dults, and has constantly executed them, should itself call them for examination, and propose to the same Holiness which should be confirmed, which should be revoked, and which should be rectified according to the same norms."

[*Latin ed. p. 203*]

DOUBTS CONCERNING INDULTS. ~0<> Whether a pressing and reasonable bodily necessity, or evident benefit to the Church, excuses [from attendance] – which the Holy Council of Trent affirmed in Session 24, chapter 12, concerning dispensations. This pertains to daily distributions [of the Eucharist]. But, besides these, it was observed that other distributions were also given, which are called those offered to the present [congregation], and which could more properly be called extraordinary, occasional, and uncertain, and which are usually offered only to those present, either by a special statute, or by the custom of a particular Church, or by the express will of the founder. It is taught by Scarfi, *ad Ceccoper*, book 2, title 10, number 1, that those absent from the choir, even for a just cause, or even by an Apostolic Indult, do not receive these distributions. Piton, *disceptationes*, throughout; Fagnan, in the chapter "Whether distributions are permitted," number 20; Benedict XIV, *Institutiones*, 107, number 58 and following. The Holy Congregation, in Bosa, during the Visitation of the Holy Limina, on February 6, 1734, and in Anagni, concerning the service of the choir and distributions, on November 20, 1819. Indeed, it was also held, even in the case of an Apostolic Indult with the faculty of receiving all daily, ordinary, and extraordinary distributions, which are received personally by those residing there, that the Holy Congregation always maintained that those distributions, which, by the will of the founders, are to be divided among the present [congregation], should remain excluded; thus, in the Leodien Indult of July 10, 1717, and also in the case in which a Canon with an Indult of Jubilation was involved, as in the Novarien Jubilation of October 2, 1617, and in the Bilunlina Anniversary of July 1, 1679. Even in the case of a very broad Canonically granted Indult, due to infirmity, as in Rome, concerning Canonical Rights, on May 5, 1703, and June 27, 1705. It should also be noted that a simple Indult not to participate in the choir on certain days and hours, which is easily granted for the sake of duties, differs greatly from an Indult not to reside in the place of the benefice, as extensively discussed by Fagnan, in the chapter "Whether distributions are permitted," number 11, and by Reiffenstiel, in *Jus canonicum*, title 4, "Concerning non-resident clerics," throughout, which is more difficult to grant, and is granted only for a short time, and with stricter limitations. In the first case, the canon or beneficiary can perform some service to his church, and must do so on those days and hours in which he is not hindered by his duties; in the second case, however, the person who is far from his residence can never access the church. Hence, in the decree mentioned

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above...

[*Latin ed. p. 204*]

204. DOUBTS CONCERNING INDULGENCES. By order of Innocent XII, published, it was decreed that indulgences should no longer be granted to Governors and Vice-Legates, who are temporarily bound to ecclesiastical service; and it was ordered that indulgences should be confirmed only for Nuncios, in which case a legitimate cause of utility for the Church is clearly verified, as mentioned by Boniface VIII in the chapter cited above (1). Furthermore, it was not overlooked that observation, according to which the Holy Congregation constantly grants an indulgence for absence from residence, due to the most praiseworthy duty of proclaiming the Word of God during Lent and Advent; however, a clause is always added, stating that if one-third of the stipend is lost, it must be made up, or if one-third of both the stipend and the distribution are lost, they must be made up together, or otherwise. It was decreed that Lecturers, who teach Sacred Theology in public Universities, should be granted an indulgence in chapter "Super Specula" 5, "Concerning Masters," where the following gloss is added: "However, they do not receive the daily distributions, which are customarily given only to those who reside there." It was stated that the Holy Congregation has always followed this rule of Canon Law, and most recently granted an indulgence to a certain Archpriest, so that he might teach theology in a diocesan seminary for only the morning hours and on days when lectures were held, for a period of three years, in order to serve the needs of the institution. Feretrana, July 12, 1817. After these matters, it was inquired whether a similar indulgence should be granted to those who, either in the City to hear the confessions of the faithful and to perform other works of piety, or even outside the City to carry out sacred missions, are engaged in laudable piety and the salvation of souls, and who spend time in these pious works (although not necessary) which they should otherwise spend in serving the divine offices in the choir. And concerning this question, it was observed that no example of exemption could be found in the Holy Congregation in any of these cases. Although, in the aforementioned decree, the term "ecclesia" [church] appears in a universal sense, the difference between the two cases is readily apparent: in the former, a particular meaning is intended, in which the granting of an indulgence is not required; in the latter, the distributions, according to the authorities cited above (see pages 70 and 73, ad 9. and 10. dubium, see page 70), are not excluded; however, in the former, another meaning is intended, a broader and, as it were, consequential meaning, which practice requires, so that, in the name of the Church, even the aforementioned should be

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included.

[*Latin ed. p. 205*]

DOUBTS CONCERNING INDULGENCES. 205. According to the resolutions of the Congregation, with the exception of cases of true necessity, the benefit of choral service is attached to the church itself. However, this may have been the case due to a special Apostolic Indulgence. Generally, canons are prohibited from leaving the choir, whether to perform the Sacred Office or to hear confessions. Thus, on March 14, 1620, the Sacred Congregation decreed that canons, while the canonical hours are recited, cannot absent themselves from the choir to hear confessions or to celebrate Masses for devotional purposes; and that those who do absent themselves will lose the distribution for that hour (1). However, this law does not apply to those who, during the season of Lent, devote themselves to explaining the Catechism, as stated in a special rescript of His Holiness Clement XIII, dated February 18, 1767. As for those canons, or beneficiaries, who do not perform any public office, but are only dedicated to the service of particular persons, and who have requested an Indulgence for absence, it has been observed by the Sacred Congregation that this has been denied, and that only a certain time has been granted to them for deliberation. Thus, John N., a chaplain in the Church of Saint Mary in Via Lata, requested an Indulgence for absence, so that he might remain in Palermo, where he served the Most Reverend Archbishop, considering especially the scarcity of income from the chaplaincy, and the question arose: "For what reason and for how long should the Indulgence be granted?" The response was affirmative, for one year, for the purpose of deliberation, in Rome, on July 11, 1818. Finally, concerning Coadjutors who request an Indulgence for the sake of studies; after mature consideration, first in the case of the Indulgence of Prato, on March 2, 1697, and later in the Indulgence of Taranto, on March 28, 1733, the Sacred Congregation rejected the request, and as is stated in the last resolution of this matter, "This decree affirmed the rule that has always been observed, of rejecting the granting of an Indulgence for absence for the sake of studies. Indeed, even to Coadjutors, it is not customary for the Sacred Congregation to grant an Indulgence that is otherwise often granted to canons for days and hours in which they are hindered by such an office."

Doubts. "Whether and how should an Indulgence be confirmed, or granted?"

(1) You can see the exceptions to this decree on page 73, in the first and second doubts.

[*Latin ed. p. 206*]

206 QUESTIONS CONCERNING INDULGENCES.

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I. Whether an indulgence can be granted to those devoted to the service of the Holy See, either in temporal or ecclesiastical matters.

II. Whether and how an indulgence can be granted to those who, while engaged in one of the aforementioned duties outside the place of their benefice, may, during their service, personally minister to their own churches and participate in choral services.

III. Whether and how an indulgence can be granted to those serving as secretaries of the Congregations of His Holiness, Sacred Reliquaries, and Cardinals, for the expeditious handling of both ecclesiastical and temporal affairs.

IV. Whether and how an indulgence can be granted to those serving in the Pontifical Chapel, either in the office of Master of Ceremonies, or as Acolytes, and Clerics.

V. Whether and how an indulgence can be granted to Lectors in public universities.

VI. Whether an indulgence should be confirmed, or granted, for hearing the confessions of the faithful, either in the church of the benefice, or in another church, or monastery; or for those engaged in the exercises of the Holy Missions, and other works of piety.

VII. Whether and how an indulgence can be granted to Coadjutors, either by reason of their duties, or for the sake of their studies.

VIII. Whether an indulgence can be granted to those devoted to the service of particular persons, even those of high rank.

IX. How provision should be made for the future.

RESOLUTION OF THE QUESTIONS. – The Sacred Congregation of the Council, after the questions were presented on May 6, 1820, decided to respond.

I. Affirmative in all cases, for the days and hours missed, among the present only.

II. Negative, except for Nuncios and Internuncios.

III. Affirmative for the days and hours missed (1).

IV. Affirmative for the days and hours, provided they personally and in the exercise of their duty participate, with the distribution among the present being omitted (2).

V. Affirmative for the days and hours missed.

VI. Negative, except in the case of true necessity.

VII. Negative in all cases.

(1) Understand by "missed" the daily distributions and among the present.

(2) That is, with the burden of conscience on the one who obtains the

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Indulgence.

[*Latin ed. p. 207*]

DOUBTS CONCERNING INDULGENCES. 207 Regarding Section VIII. With the exception of those pertaining to the Caudatariis [a specific group], the Cardinals of the Most Holy Roman Church, regarding the form of the decree of August 19, 1690. Regarding Section IX. To the Most Reverend Secretary, in accordance with the intention: (1) and the intention is: That the indulgences already granted are to be confirmed, or reformed, or revoked, according to the form of the preceding resolutions, and to request the Most Reverend to grant them in the future only through the Sacred Congregation of the Council, under penalty of nullity; (2) and that these indulgences are not valid unless obtained with a decree of execution from the Ordinary, or from a legitimate superior. Following the presentation of this Resolution, on the 10th of the same month, to the Most Reverend Father, "His Holiness benignly approved the resolution of the Sacred Congregation regarding the nine aforementioned doubts in all respects, and confirmed them accordingly, and wished that, in particular cases not included under the aforementioned doubts, provision be likewise made by the same Sacred Congregation according to the Holy Canons and the Holy Council of Trent, and according to the practice hitherto observed by it, and that all the foregoing be inviolably observed from July 1st next, to all indulgences, both those granted by the Holy See, and those granted by the Popes Predecessors, and all other indulgences whatsoever, notwithstanding, to which the aforementioned [decree] most broadly derogates" (3). FROM THESE, SEVERAL THINGS CAN BE GATHERED. I. That, by these resolutions, neither the decree of Innocent XII, nor the practice in force in the Sacred Congregation of the Council, has been abrogated, but only determined, restrained, and in some respects, limited. II. Therefore, it can be sufficiently recognized from the aforementioned resolutions, as well as from the decree and practice presented in the synoptic discussion, the ordinary practice that prevails in the Sacred Congregation of the Council in granting such indulgences. III. Various indulgences, granted for various reasons, carry with them different clauses. (1) See page 83 in the note. (2) At that time, such indulgences could be obtained in other ways than through the Sacred Congregation of the Council, for example, through the Sacred Penitentiary, etc., as can be seen in Florence on March 25, 1819, and elsewhere. (3) A question was raised by those who serve as Secretaries, whether an indulgence should be granted to them, not according to the resolution of the third doubt, but, comparing those who reside in the City and are devoted to the service of the Holy See, either in temporal or ecclesiastical matters, according to the resolution of the first doubt, that it should be granted to them. However, the Sacred Congregation decided that the

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previous decisions should be adhered to on May 25, 1822.

[*Latin ed. p. 208*]

208. DOUBTS CONCERNING INDULTS. IV. Attention must be given to those clauses which must be properly observed regarding the benefits, or the provision thereof, which is stable, and which are not usually subject to uncertain events of presence or absence. V. Likewise, attention must be given to ordinary, or daily, distributions which are due to those present at the customary choral service, and those which are subject to specific conditions. VI. No less attention must be given to extraordinary distributions, which are said to be among the present, and which are given actually to those present, so that they cannot be received by those absent, who otherwise would have the right to receive the daily distributions. VII. Indeed, even if an Indult is obtained to receive these distributions in the absence of the recipient, this does not mean that these distributions, which are intended for the present, are included among those which the will of the Benefactors would resist being given to. (1) VIII. If all of these things are not distinguished in some choral benefit, or if they are not properly distinguished, provision must be made for them, and appropriate provision must be made in the granting of Indults; and frequently, through a certain formula, as will be explained in the following case. INDULTS. April 27, 1861. Summary of prayers. The Canon of the Cathedral Church, A., obtained from the Sacred Congregation of the Council an Indult for the purpose of study, to allow him to be absent from his residence, with the usual clauses, namely: - that he nevertheless may still receive all the fruits of his Canonry, except for the daily distributions. But if all the fruits consist of these distributions, or if the revenue does not reach one-third of the distributions, he shall receive two out of three parts of the distributions, or the provision and the distributions of the choir, respectively, losing the third, which will go to those who serve. (i) An example would be if the Benefactors left a legacy, for example, to be distributed only to those who attend the choir on a more solemn day, or who assist at a funeral, etc.

[*Latin ed. p. 209*]

INDULGENCES. 209 Since half of the canonical prebend's revenues were assigned for daily distributions, and the other half for other benefits, the Chapter considered that the honorary canon should lose, not only the third part of the revenues, but also the distributions themselves, in accordance with the aforementioned decree; for if he were to lose only the third part of all revenues, the distributions assigned for the more solemn days would at least remain. Therefore, a declaration was sought from the Holy Congregation, which would provide a rule for future cases as well; at the same time, the honorary canon requested that, by grace, he be granted what might, if the law were strictly followed, be denied to him. The

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Bishop, after being consulted for his opinion and vote, did not disregard the plea of the Chapter, which unanimously agreed that the lecturer, for the time during which he could not reside in order to dedicate himself to his studies, should not be deprived of his daily distributions. The Bishop himself pointed out that the lecturer's allowance should amount to a total of 111 scudi; after deducting 50 scudi for expenses, the annual income remaining would be 61 scudi. However, he observed that, according to the law, daily distributions should not be received by those who are absent from divine services, nor could such a practice be introduced by any custom, unless all the revenues of the prebend consist of distributions, in which case, he who, by privilege within the body of the law (1), or by an Apostolic Indult, is excused from attending the choir, may receive two-thirds of those distributions. Benedict XIV, Institutes, 107, § 9, n. 58, as well as from constant practice, the Holy Congregation had also written to the lecturer. Furthermore, the Bishop noted that it is not permissible for the Chapter to donate, relinquish, or, by any collusion, remit the daily distributions to one who is absent, or for any reason whatsoever.

(1) "Privilege within the body of the law" is said to be that which is derived from the law found in the Decretals, to distinguish it from that which is established in the same place as we said on page 69. The fourth meaning of the word "corpus" in the Constitutions of the Holy Pontiffs, which are not inserted in the collection of Decretals, is that which the Doctors called "extravagantes." This manner of speaking, namely, "within the body of the law" and "outside the body of the law," was considered extravagant, as stated by Doctors, volume 4, page 14.

[*Latin ed. p. 210*]

The provided text does not contain the quotation for Isaiah 26:11. Therefore, no changes are made.

210 INDULGENCES. He ought to lose them; nor is it lawful for anyone to receive them, and if he has ceased to perform his duties, he is entirely bound to restitution, cf. Inst. §. 7, n. 92. However, he added that the Sacred Congregation, considering the particular circumstances of each case, and especially in order to provide for the needs of the poor, has sometimes granted that Canons who are absent may enjoy the daily distributions, and they said: "Let them now, from these explanations, answer to the prayers of the Canons," and they concluded: "Let them rejoice in what has been obtained; or rather, let them assent to his wishes, notwithstanding the reasons given." More things were added to this, which, because they greatly illuminate the tenor of this Decree with which the Sacred Congregation uses when granting these indulgences, we refer to almost everything here. It was noted that the present question concerned whether the Canon, the Orator, ought to lose only one-third of the distributions and fruits together accumulated, or rather, the entire distributions, in virtue of the Decree.

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However, in either hypothesis, no reason seemed to exist why an exception should be made with regard to the more solemn days. Indeed, the Indulgence, according to the constant practice of the Sacred Congregation, had been granted to the Orator only for the enjoyment of the fruits, and by no means for the daily distributions, which he is entirely commanded to lose – having lost the distributions. An exception is made only in two cases, namely, when all the fruits consist of distributions; or if the revenues of the benefice do not amount to one-third of the distributions, and then, after the accumulation of distributions and fruits for the benefice, two-thirds are assigned to the Indulgentiary, while the third is added to those who serve. Neither of the aforementioned cases seemed to be applicable in the present matter. For, the revenues of the benefice did not consist solely of distributions, and these revenues not only amounted to one-third of the distributions, but even exceeded the portion assigned for distributions. Therefore, the case in question seemed not to fall under an exception, but rather under the general rule, according to which an absent Canon may enjoy only the fruits, but not the distributions of his Canonry, as Innocent XII, after a prior vote of the Congregation deputed for the Reform of the Indulgences exempting from service in the Canonries and Benefices of the City, declared, on May 8th.

[*Latin ed. p. 211*]

It has been granted, and the Holy Congregation has consistently maintained, as can be seen in Cardinal Petrucci's commentary on Constitution IX of Boniface VIII, throughout. Furthermore, it was observed that when the Holy Congregation used to respond, a question arose – if the fruits of the offering do not reach, or do not exceed, one-fourth of the distributions, how should these words in the response be understood? Namely, whether it is required to accumulate [the offerings] and profit from two out of three parts, that the offering should not reach even one-fourth of the distributions, or whether it is that it should not exceed three out of four parts of the distributions. Pignatelli, in his *Consultations*, volume 83, number 9, affirms, for several reasons, that those words should be understood in the sense that the offering should not exceed three out of four parts of the distributions; that is, as Petrucci explains in the aforementioned passage, number 27, he believes that for the calculation, the distributions should be divided into four parts, and if the fruits of the offering do not exceed three parts of the distributions, they are not said to reach one-fourth of them, and thus there is room for accumulation; otherwise, if the fruits of the offering exceed three parts of the distributions, so that they reach one-fourth in the obolus [a small coin], then accumulation should not be made. Thus, for example, if the distributions were in the amount of 40 scudi, and the fruits of the offering were in 30 scudi, then accumulation should be made, because they do not reach one-fourth; but if the fruits of

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the offering were in 31 scudi, then accumulation should not be made. From this, Pignatelli refutes Fagnani, who in chapter "Quia tantum," number 33, and in chapter "Licet," number 139, regarding offerings, teaches that the fruits of the offering are considered meager when they do not exceed, or do not reach, one-fourth of the distributions. These words imply that if the distributions were in scudi of 40, and the fruits of the offering were in scudi of 10, the fruits of the offering would be considered meager in relation to the distributions; otherwise, if they exceeded 10 scudi. However, Cardinal Petrucci, in the aforementioned passage, adds, "And indeed, the meaning of Fagnani should be considered," both because it is based on the resolutions of the Holy Congregation, and also because he is experienced in this matter; and finally, "the reason also arises from the privilege, because, to the extent possible, the service of the choir and the rights of other servants should be protected." And finally, he concludes: "After the time of Fagnani, which Pignatelli, in the aforementioned passage, did not notice, from the year 1669, a formula was added to the Holy Congregation's decrees, which..."

[*Latin ed. p. 212*]

212 INDULGENCES. » This effect of the aggregation of distributions, along with the fruits [of the benefice], does not reach one-third of the distributions, as is now maintained and ought to be understood according to the aforementioned [rules], namely, that if the distributions amount to 30, and the fruits amount to nine scudi and 90 oboli, they should not be said to reach one-third of the distributions; otherwise, if they amount to ten scudi, it would literally and reasonably be said that they reach one-third. However, as Pignatellius suggests, this is clear to the reader and calculator; all the more so because in this new formula, greater consideration has been given than in the past, which did not exceed one-fourth, and indeed reasonably; for just as the Council wished that, if there were no distributions, one-third should be set aside for these [beneficiaries], so it is fitting that at least one-third of the quantity of the distributions should be applied to the fruits. » Furthermore, it is evident to everyone that, although the fruits of the benefice should be calculated according to the norm established by Pignatellius, nevertheless, there would be no room for the aggregation [of distributions and fruits]; because the fruits of the benefice do not exceed two out of three parts of the distributions, but rather equal the distributions themselves, as noted above. Having made all these observations with care, it was submitted to the Most Reverend Fathers to decide whether, if not by law, at least by grace, the Orator should be granted an indulgence so that he might receive all the daily distributions, except for those given to the present [beneficiaries], as the Holy Congregation has sometimes decreed, or at least that he might receive two out of three parts of the fruits and distributions together, the third being withheld, and this especially with

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the consent of the Chapter and with due regard for the revenues of the benefice, which, after the distributions have been withheld and the obligations satisfied, remain for the same [beneficiary].

DECREE. — The Holy Congregation of the Council, having considered this petition presented through the Most Reverend Fathers, responded on April 7, 1861: In the case under consideration, the Indulgence does not lose the daily distributions; but, with the consent of the Chapter, for the sake of grace, it may be permitted for the Orator, during the absence of the Indulgence, to receive two out of three parts of the distributions and fruits together, the third being withheld, which will accrue to those who serve [the benefice], provided that this is agreed upon with the Most Reverend Fathers.

[*Latin ed. p. 213*]

INDULGENCES. From II, 213, the following are gathered: I. Those who are absent from the choir, by virtue of the aforementioned Decree, lose all daily distributions, and are considered absent. II. However, there are two exceptions: namely, if all revenues designated for daily distributions have been assigned. In this case, only one-third of the distribution is lost by the absent person. III. The second exception occurs when the revenues assigned for fruits are small in comparison to the distributions. IV. According to the opinion of Fagnani, who explains the aforementioned Indulgence formula, "small" means not reaching one-third of the total distributions. V. In this case, after considering all revenues, the person absent by virtue of the Decree loses only one-third of the resulting total sum. VI. In the present matter, neither of these exceptions applied. For the revenues assigned for fruits were equal to the revenues assigned for distributions. Therefore, such a person should have lost all distributions by virtue of the Decree. VII. However, considering the generosity of the Chapter, the Holy Congregation deemed it permissible to grant an indulgence to the Orator, if it pleased the Most Holy Father (1), through a petition for the SEPARATION OF TORI AND HABITATION. On February 27, 1834, Session 24, concerning the Registry. Six months had not yet passed since the marriage was contracted, when the wife, A., having left her marital home, petitioned her own Curia for a legitimate separation of tori and habitation. The ecclesiastical judge exerted himself as much as possible to reconcile the wife with her husband, but in vain. (1) The consent of the Chapter is not a legitimate title to receive the distributions that each person is justly obliged to lose, as the Bishop rightly pointed out in his information. Therefore, although the Holy Congregation was moved to grant an indulgence to the Orator primarily because of the consent of the Chapter, it nevertheless added its

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own decision to that of the Chapter. See page 89 in the note.

[*Latin ed. p. 214*]

2Î4 OF SEPARATION OF BED AND BOARD. After a dispute arose in the court, the cause was decided in favor of the husband. But the wife, not agreeing with this judgment passed against her, appealed to the Sacred Congregation. Therefore, the procedural records and other documents relevant to the matter were transmitted, and the Sacred Congregation wrote to the Ordinary, instructing him to summon the parties again, so that they might present their further arguments before the Sacred Congregation. The husband appointed a defender in Rome, while the wife presented her case anew. The wife presented three types of complaints for legitimate separation. Namely, 1. She affirmed that she had a certain aversion to the husband, even before the marriage, and that she had been induced to enter into the marriage out of reverential fear of her uncle. 2. She alleged that physical defects were found in the husband after the beginning of the marriage; namely, a foul odor, herpetic eruptions, and a certain impotence. 3. She complained of constant insults and rude, imperious behavior with which she was treated by the husband. To prove these complaints, the wife summoned several witnesses, but the principal witness who should have confirmed the second and third complaints testified in court, rather against the wife, under oath. The husband, contradicting the accusations made by the wife, presented several letters from the wife herself, which demonstrated a preconceived love for him before the marriage, and confirmed it. Furthermore, four men, skilled in the art of medicine, were appointed by order of the court, two of whom had cared for the husband's family for a long period of years, and all of them, under oath, examined the husband and refuted almost entirely the nature of the complaints. However, the wife maintained that some other witnesses, whom she had summoned, had not been heard by the court, who, especially, could have testified about the aversion and disapproval of the marriage.

DISCUSSION. DEFENSE OF THE WIFE. — It was noted, in accordance with the office for the defense of the wife, that a divorce, concerning bed and board, can legitimately be granted where one cannot live with the other without serious danger of harm, due to the other's cruelty, according to chapter 8 and chapter 13 of the aforementioned canons concerning divorce and separation. Especially if the cruelty is frequent...

[*Latin ed. p. 215*]

SEPARATION FROM THE BED AND HABITATION. 215 These [reasons] must be, and are, grave, so that a trembling woman cannot be provided with sufficient security, as the Holy Congregation stated in *Fermo* in the Decree of Separation from the Bed, May 16, 1789, in *Nullius* of St. Martin, July 28, 1804, and in others. Indeed, it was added, as Coscius

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observes in *De separatis, tori*, book 2, chapter 7 and following, that separation should be granted even if there are only minor, but frequent, acts of cruelty; because bad treatment, especially when it is unreasonable and unjust, breeds hatred, and drives an innocent wife to commit wrongdoing. All of these things were said to have greater force in the case of Wife A, who was of noble birth and of exquisite education. Furthermore, a contagious disease and a serious bodily danger are considered a legitimate cause for divorce with regard to separation from the bed and habitation, as is stated by Ferraris in *v. divortium*; and a chapter is devoted to leprosy in married couples. The reason for this seems to be based on the natural interpretation, whereby spouses, who in the marriage contract confer upon each other the power over their bodies, promise and undertake to live together, safeguarding the safety of their own persons. If, therefore, the four appointed experts in this case excluded the existence of this cause, the wife nevertheless rightly complained against them, because two of them were closely connected by intimacy and friendship with the husband and his family; therefore, their testimonies did not seem to deserve to be considered. The other two, however, did not deny that they had found some indications in the husband that could demonstrate these diseases. Finally, with regard to the wife's aversion to the husband, it was noted that antipathies, according to the opinion of experts, sometimes occur in cases in which very serious inconveniences arise, or rather, a mutual dislike, and even more so, a mutual lack of conversation; so that an unwelcome presence disturbs the nature and affections of others. In the present case, however, the wife's aversion was so strongly affirmed that she openly declared that it would be "impossible for her to resume the accustomed habits of life with the guilty husband." If all of these things were not sufficiently proven from the records, the wife rightly complained, because no other witnesses were heard by the Court to testify to the truth, namely her uncle and his servants, nor certain women whom she named. Therefore, it was argued that, especially according to the law in force in that province, the procedural acts should be quashed.

[*Latin ed. p. 216*]

216. ON THE SEPARATION OF HUSBAND AND WIFE, AND THEIR RESIDENCE. DEFENSE OF THE HUSBAND. — The Defender of the Husband, maintaining that the heads of the accusations were either frivolous or false, rejected the first point of the complaints, namely, those derived from letters sent by the Wife to the Husband before the marriage, and also from the character of the Uncle, who pursued his niece with ardent affection. Furthermore, he argued that even if this first type of complaint were demonstrated, it might perhaps serve to initiate a cause for the nullity of the marriage; but it certainly would not suffice for a separation, concerning the husband and wife's residence. For in the present case, the validity

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of the marriage was presumed, and therefore the Court rightly did not admit the witnesses presented by the Wife. Regarding the second type of complaint, the Defender of the Husband rejected it, based on the unanimous testimony of four experts. Moreover, he pointed out that if two of these experts were rejected by the Wife as being suspect, it should be noted that, in such controversies concerning facts within the domestic sphere, those who might be considered suspect in other cases are often admitted. *Rota decis. 3, 5, 1, n. 14; cor. Ludovisi, decis. 1, 1, 5, n. 9, par. 18, tom. 1, rec. Cosci de sep. tori, lib. 1, c. 8, n. 32 et seq. etc. Specifically, concerning the alleged herpes, he observed that if it had existed, it should also have been demonstrated to be contagious, as is required by chapter 1 and 2 concerning conjugal leprosy, which is properly explained by Cosci in his work, op. cit., lib. 2, c. 12, n. 25. The third type of complaint was excluded, based on the testimony of the very witness presented by the Wife, who stated, "as far as I know, the Husband treated his Wife well," while the Wife herself demonstrated "that she treated her Husband with a severe manner." However, the Defender concluded that such bad behavior, even if it existed, could not constitute grounds for divorce, since it was neither grave nor persistent. *Rota in Anconitana obsequiorum Matrim., 15 June 1764, cor. De Viri, n. 2 et seq. With these important considerations brought to light, the Doubt was reconsidered: "Whether the judgment of the Court should be confirmed or rejected in this case." SOLUTION OF THE DOUBT. — After discussion by the Congregation of the Holy Council on February 27, 1864, it was decided to confirm the judgment of the Court, responding: "affirmative" to the first part, and "negative" to the second part.

[*Latin ed. p. 217*]

SEPARATION OF THE ALTAR AND RESIDENCE. From II-217, we gather. I. Grave reasons are required for a legitimate separation of spouses concerning the altar and residence, and such grave reasons are entirely absent in the present matter. II. The reasons that might perhaps be adduced to demonstrate the nullity of marriage should not be confused with the reasons that, with the marriage still existing, must be presented to obtain such a separation.

TRANSLATION OF THE PARISH. On February 27, 1864. Summary of the facts. There existed in a certain town a parish, A, which possessed a very small parish church, increasingly inadequate in accommodating the growing number of souls, deteriorating with age, having an unsightly appearance, and constantly suffering from dampness, so that the walls were covered with mold, and the tombs were filled with water seeping from the nearby mountain. The pastor, noting that the people frequented it less because of these inconveniences, and desiring to provide more fittingly for divine worship, conceived the plan of transferring the parish to another church, St. Sebastian's, which belonged to the Municipality, preserving the

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honors and obligations of both churches. The Bishop not only approved of this plan, but also took care to ensure that it was approved by the Municipal authorities, and that any difficulties that might arise were overcome. After various consultations, it was agreed between the pastor and the Municipal authorities that the sum of three thousand pounds would be spent to enlarge and improve the appearance of the church of St. Sebastian's. To fulfill this undertaking, contributions flowed in, first from the Municipality itself, then from the pastor and two sodalities, and a convention, approved by the Holy See, was presented between the pastor and the Municipality, in which, among other things, the following article was stated: "The rights that the Municipality currently holds in the church of St. Sebastian's shall remain entire and valid, except for the condominium of the same church, which must be ceded to the pastor, who shall be obliged, himself and for his successors, to bear half of the expenses that will be necessary for the maintenance of the same church."

[*Latin ed. p. 218*]

2. REGARDING THE PAROCHIAL CHURCH TRANSLATION. The Ordinary, for information and approval, among other things, responded: "The Most Holy See must be awaited, so that, with its favor and benevolence, it may be certain that, given the aforementioned agreement, the divine cult, the good of religion, and the souls will be promoted; and that the town, which lacks a more decent temple, may be enriched." Furthermore, since a certain sum had been deducted from the pious funds of the locality, approval of the agreement was sought, and also Apostolic approval for the allocation of that sum of money for the benefit of the church of Saint Sebastian. Twice, through brief petitions, this matter was presented to the Sacred Congregation; finally, it was fully resolved and explained in a written document.

DISCUSSION REGARDING THE TRANSLATION OF THE PAROCHIAL CHURCH. — It was noted that the translation of a parochial church to a different location is to be permitted whenever just and legitimate reasons concur. Among these, the indecency and narrowness of the church itself are particularly noteworthy, as noted by Rebutí, in *Practica Beneficiorum de Translationibus*, n. 7, and by the Sacred Congregation in *Burgen*, November 14, 1733, and in *Mediolanen*, April 3, 1734. It was also stated that there is no impediment in the case where the parochial church should be transferred if it can be repaired, so that those things which are dedicated to the sacred ministry do not become obsolete through the passage of time, as noted by the Council of Trent, Session 21, Chapter 7, on reform, and as confirmed by the Sacred Congregation in *Civitatis Castelli*, March 13, 1762. Indeed, for the aforementioned reasons, it almost seemed impossible to restore the aforementioned parochial church to a more decent form.

REGARDING THE MONEY TO BE TAKEN FROM PIOUS FUNDS. — It

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was also noted that, for the construction or repair of a parochial church, pious legacies and masses are sometimes used, as stated by Amostaz, in *De Causis Piis*, Book 1, Chapter 2, n. 1, and Book 2, Chapter 13, n. 35; Brasch, in *De Potestate Ecclesiae*, Volume 3, Chapter 24; and, in the present case, the agreement of the members was particularly helpful, since it concerned the allocation of funds from the Sodalitas for the construction of the parochial church, as evidenced by the document from *Ripatransone*, June 16, 1787, regarding a doubt. Indeed, sometimes even the suspension of dotal subsidies has been granted, as in *Melevitana*, regarding the Rebuilding of the Church, on July 9, 1842, regarding a doubt. For the building or repair of a church,

[*Latin ed. p. 219*]

TRANSLATION OF THE PARISH. 219 "That it may tend towards a greater increase in divine worship, it enjoys the greatest favors. Furthermore, having considered certain articles of the agreement, the matter was proposed to the Sacred Congregation by summary petitions on June 6, 1863, and the Sacred Congregation responded: "It is postponed, and in accordance with the opinion of the Congregation." The Congregation further inquired, among other things, whether the old parish church is found in such a condition that it cannot be restored. Whether the new church of Saint Sebastian is truly central for the benefit of the people. The Ordinary, fully satisfied on these points, demonstrated the impossibility of restoring the parish church, and, on the contrary, that the church of Saint Sebastian, which is located in the center of the town, would be of great benefit to the people. And the Sacred Congregation, on September 26, 1863, responded: "Regarding the transfer in general, it is approved; regarding the manner, it is postponed, and in accordance with the opinion of the Congregation." The Congregation's opinion was: that the condominium of the new Church of Saint Sebastian, as stipulated in the articles of the agreement, should be removed to avoid causes of litigation and discord between the Municipality and the Parish Priest; and, in place of this condominium, the patronage should be granted to the Municipality, but limited solely to the church, and not at all to the parish, so that the major repairs of the same church, which might be necessary after the transfer of the parish, would be the responsibility of the Municipality, while the Parish Priest would be responsible for minor repairs during that time. Thus, the parochial functions would belong to the Parish Priest, while, on the contrary, non-parochial functions, such as the feast of the patron saint, and other extraordinary religious ceremonies that might occur with the authority of the Ordinary, would belong to the Municipality. Having renewed the articles of the agreement, which were highly recommended by the Ordinary, the following question was proposed to the Sacred Congregation: "Whether and how the proposed agreement should be

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approved in this case." The Sacred Congregation, on February 27, 1864, decided to approve it, according to the opinion of the Ordinary, but with the deletion of article XIV (1), and with the instrument being made valid in law with the words: "RESOLVED."

(1) This article XIV reserved certain special rights to the Municipality, which, however, seemed to be sufficiently understood within the patronage over the church reserved to it.

[*Latin ed. p. 220*]

220 OF TRANSLATIONS Concerning Parishes. COLLECTIONS: I. To transfer a parish from one church to another, just and legitimate reasons are required. II. Such reasons are considered to be the ruin, indecency, or narrowness of the parochial church, whose restoration, if carried out, would not eliminate these inconveniences. III. Agreements between parties concerning the rights of churches must also demand apostolic approval, so that they may be firm. IV. And this approval shall be granted after a careful examination of the proposed agreement, in which examination, besides the justice and utility of the same agreement, attention is also given to preventing, as far as possible, future causes of discord. PARISHES. January 26, 1861. Summary of petitions. The supplication which Bishop A. had sent to the Sacred Congregation for the Council was presented, as we mentioned in the previous volume, page 151, and received a response: "There is no place for a privilege of the benefice, but rather for the appointment of an ecclesiastical man as administrator over the goods, both of the parish and of the fabric, who, after deducting the necessary expenses for a decent presentation of the parish, shall allocate the remaining revenues to the repayment of the debt." However, the Bishop did not consider it appropriate to acquiesce in this response, and therefore, with new data, he proposed further considerations to the Sacred Congregation. Furthermore, he stated: "Since the debts for the response, which expire on March 31, are soon to elapse," in response to the question posed to me by the Sacred Congregation of Cardinals of the Council of Trent: "Whether, in the case of a parish burdened with a debt, which continues to cause great scandal to the faithful, and in which there is no hope of its being repaid, can what the Sacred Council of Trent, in Session 21, Chapter 6, concerning reform, regarding those who live shamefully and scandalously, established, be applied, so that the deprivation of the benefice may be determined?" If not, by what other legal remedies can the scandals that such a parish or beneficiary, through their own fault, have incurred, be publicly addressed?

[*Latin ed. p. 221*]

PARISHES. 22. "Do those [parishes] present dangers, and is there a peril, on the part of those [parishes], from which the Bishop ought to intervene?" I give thanks; allow me to observe that, although the response of the Holy

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Congregation is praised, the difficulties which these [parishes] present, through the laxity of their pastors in matters of money, cannot be removed in any way. "For it is not so much about the manner in which the goods of the parish itself and the church are administered, or in which debts owed to creditors are finally paid, but about a great scandal which that pastor presents in the parish and throughout the entire surrounding area, to both Catholics and non-Catholics. Although it is shameful, in the sense that clerics polluted by the vice of concubinage and lust do not live, the manner of his conduct among the parishioners nevertheless robs his words and exhortations of all force and effect, and exposes him and his entire ministry to contempt, and provides an opportunity for the entire status of the clergy to be severely undermined." "The evil, the cause of which is the priest, grows daily, and unless it is vigorously resisted, it will soon corrupt the entire parish, and the esteem without which everything he does will not only be rendered invalid, but will also be deeply harmful to the parishioners, and will completely undermine and subvert it." "Since these things are so, allow me to once again propose the question: by what other legal remedies should the scandals which such pastors, or beneficed individuals, publicly present, and which clearly endanger the salvation of the faithful, be addressed by the Bishop?" Having once again set forth these considerations, it is observed that if the appointment of an administrator is not deemed a sufficient remedy, but some further provision is required because of the scandal, then nothing clearly prevents the Bishop from taking legal action against such pastors or beneficed individuals; namely, through warnings that are declared invalid, up to suspension, or even removal from the parish, and finally, to the deprivation of the benefice. "For when the manner in which pastors act is such that it is turned not to the edification, but to the destruction of the Church, and to the scandal of the Christian faithful, so that they can no longer derive any benefit from their ministry, the common good, which should always be preferred to the private good, requires that..."

[*Latin ed. p. 222*]

222. PARISHES. Care must be taken that the people are provided for, and that the contumacious parish priest receives the punishment due to him; which, maintaining a proper proportion, and according to the various circumstances of time and place, also seemed to be to be considered in the case of other benefices, because of the scandal they cause among the people, and the disgrace they bring upon the ecclesiastical community through their fault. DECREE. The Sacred Congregation of the Council, having reviewed the matter again, decreed on January 26, 1861: "In the decrees, saving, however, the right of the Bishop to proceed against the parish priest to the extent that he does not conform to the Holy Canons."

FROM THE SACRED CONGREGATION OF BISHOPS AND REG-

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ULAR CANONS CONCERNING THE NULLITY OF A TESTAMENT FAVORING A FORMER RELIGIOUS OF THE ORDER OF THE MINOR OBSERVERS. January 23, 1863. Summary of the case. Seraphina, a widow, having three sons, namely Dominic, Vincent, and Angelo, by means of a will dated October 23, 1830, having left the legitimate portion to Dominic and Vincent, named Angelo, a former Religious of the Order of the Minor Observants, as her universal heir; and she declared that she did so for various reasons, and in particular because of many arguments of filial affection, and for the outstanding merits which Angelo had abundantly demonstrated at all times; since he had never wished to abandon his mother, but rather had preferred to live with her, and had never ceased to provide her with the most ample assistance of every kind. Therefore, Angelo peacefully inherited the maternal estate, without any opposition, and remained in possession of it until the year 1862; in that year, the sons of Vincent, who had in the meantime passed away, presented their petitions to the Sacred Congregation of Bishops and Regular Canons, praying that the institution of Angelo as heir by Seraphina, the grandmother of the Oratorians, be declared null and void because of his unworthiness.

[*Latin ed. p. 223*]

CONCERNING THE NULLITY OF A WILL, ETC. concerning an inheritance derived from a vow of religious poverty, granted by the Holy See, and therefore, so that access might be opened to it for the benefit of the legitimate heirs and others, as if she had died intestate, Seraphina. The Ordinary, as is customary, having been asked for his opinion on the matter, agreed, according to strict law, that the addition of the inheritance should be deemed null; nevertheless, considering the particular circumstances, he considered it just that Angelus, already an old man and afflicted with many infirmities, should be left in peaceful possession and enjoyment of the inheritance, as long as he lived. What is involved in both cases will be clearly shown from what follows. Discussion of the arguments. WHAT ARGUMENTS FAVORED ANGELUS. — Angelus, a former Religious, in defense of his rights, against his nephews, Vincent, who were his adversaries, presented three documents, which had been granted to him by the Holy See, first, namely, a decree issued by the Sacred Penitentiary on November 11, 1808, by which he was granted the power to obtain any simple benefice, even with residence, and even with the care of souls, so that he might lawfully use the fruits derived from it for his honest sustenance. The second was given by the Sacred Congregation for Religious on January 11, 1809, by which he obtained a permanent secularization, and also obtained the right to use and enjoy the fruits of his patrimony and other ecclesiastical emoluments for his honest sustenance... while preserving the substantial vows of his profession, which should always remain in full force. Finally, the same Sacred Congregation granted him a third decree on May 13, 1844, in

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which the Holy Order graciously approved the granting of a dispensation to dispose of property only during his lifetime, or for reasons of death, but certainly not by will, provided that the cleric donates the property by title of alms to his Convent, if it exists, otherwise to his Order. Indeed, from the tenor of such documents, Angelus argued that he had been restored by the grace of the Supreme Pontiff to all his former rights as a citizen, as if he had been reinstated from exile, rights which he had lost by his solemn profession, such as the right to inherit*, which, according to the laws, are offered to him. For it is true that...

[*Latin ed. p. 224*]

224 CONCERNING THE VALIDITY OF A WILL, ETC. This [Angelus] inferred from the mind of the Supreme Pontiff, which was such that, when Angelus was obliged to live outside the Monastery, he should not be able to obtain sustenance from it any longer, but should have some other means by which to provide the necessities of life, lest he be forced to beg. This [burden] was merely imposed upon him, so that he might not be able to dispose of the inheritance in any other way, and it had been permitted to him in the formula of the rescript of the year 1844. Secondly, Angelus defended himself with the shield of prescription, which extended for more than thirty years, the passage of which, according to the well-known norms of civil law, was an impediment to his nephews, preventing them from further pursuing any action to claim the inheritance. Furthermore, he pointed out the silence and acquiescence of his brothers, Vincent and Dominic, and of the Religious themselves, over so long a period of time, by which they had demonstrated that they were content with the legitimate portion they had received from Seraphina, and therefore, by their silence, they had tacitly renounced any right they might have had. Moreover, Angelus presented several claims of his creditors against his opposing nephews, the first and most important of which was that they should compensate and reimburse him for the sums which he had generously expended from his own resources for the support of his elderly mother, and for the care and assistance of numerous others who were in need. For, he asserted, this burden should have been borne by the three brothers in common, not only according to natural law, but also according to the explicit disposition of the father. Finally, Angelus argued that he could only be deprived of possession of the inheritance through a properly instituted legal process, and not through the intervention of the Sacred Congregation, which only deals with matters economically and, according to the will of both parties involved in the dispute, defines the causes.

POINTS OF ARGUMENT PRESENTED BY THE RELIGIOUS AGAINST ANGELUS.

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It is well known, it was said in opposition, that Regular [Canons] are, by reason of their vow of poverty, entirely incapable of disposing of anything in their own name; and although the Regular Orders are, in general, permitted to possess property in common, nevertheless, as regards the houses of the Brothers of St. Francis of Assisi and those who are called the Minor Observants, the Council of Trent, in its decree "De Regularibus," session 25, chapter 3, uses such explicit words that they are excepted, so that they are not permitted to possess either individually or in common.

[*Latin ed. p. 225*]

ON THE NULLITY OF A TESTAMENT, ETC. 225. (1) Consequently, according to the universal opinion of the Doctors, it is established that if an inheritance is bequeathed to a religious by a testator, or by intestacy, in Religious Orders which enjoy the right of possession, the Religious Order itself, in place of the individual Religious called to the inheritance, succeeds; but in Religious Orders which lack this right, neither the Religious Order nor the individual Religious obtains the inheritance in place of the other, and therefore the inheritance devolves to those who, by intestate succession, are legitimately called to it. The title of universal succession implies dominion over things, which must be entirely absent, as is perfectly taught by St. Pius V in his Decree *Petri ad Const.*, section 4, 7, with all the Doctors. Although, by the authority of the Interpreters, it is taught that the Apostolic See succeeds in place of the Religious who, in Religious Orders affected by the inability to possess, have made a solemn profession, nevertheless, the case is excepted in which the testator intended, not a pious, but only a profane motive; as happened in the case of Seraphina, who openly had the will to reward her son, Angel, for his merits towards her. Nor did the rescripts obtained from the Holy See in the years 1808 and 1809, in which Angel was granted the faculty of acquiring benefices, of any advantage to him, as if by them he had recovered all his civil rights. For the rescripts concerning secularization, with the faculty of acquiring benefices, could in no way extend to those things which touch upon the substance of the vow of poverty. And indeed, the Most Holy Council has repeatedly declared that secularization in no way relaxes the vow of poverty. In the Decree of the Congregation of Cardinals, dated August 23, 1692, in *Petri ad Const.*, 16, Eugenius IV, section 1, number 10, volume 4, when the Order of the Jesuits had suffered canonical suppression, it was asked whether the Jesuits dismissed from that Order possessed the right to make a will; but the Sacred Congregation gave a negative answer. Also, on May 13, 1679, when the Regular Canons of St. Gregory in Alga were suppressed for the same reason, and therefore the Reverend Fathers inquired: "Whether the aforementioned Monks can make a will." (1) This is because the inability to possess not only affects individual Religious Orders separately, which happens in all Religious Orders, but also strikes the Religious Order itself

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collectively, which is not extended to all Religious Orders, but to the Capuchins, the Observant Minor Order, and some others.

[*Latin ed. p. 226*]

226 CONCERNING THE NULLITY OF A TESTAMENT, ETC. "Can [religious] vows and inheritances be compatible, and can [religious] men possess and administer property as if they had never professed [their vows], and remain in the world?" Both Congregations responded negatively in the matter of Petrus Const. V, Ben. XII, n. 29, i. 4. Nor was the rescript of the year 1844 of greater importance, in which a dispensation was granted to Angelo to dispose of property during his lifetime and after his death; for one thing is to make a will actively, and another is to passively receive an inheritance from a will, or, in plainer words, one thing is to be able to make a will, and another is to receive an inheritance from a will. The rescript of the year 1844 permitted the active making of a will; nothing, however, was said about the passive reception of an inheritance. Indeed, there is nothing more common in canon law than the rule that the form of rescripts must be observed, as the Rota decided before Durando, in decisions 238, 295, and 350, page 1, Recent. This is also confirmed by a recent case before the Sacred Congregation of Bishops and Regular Canons, concerning Ariminen, regarding the same matter, on December 10, 1850, in which a certain Capuchin had obtained from the Sacred Congregation the power to modify a will that he had made before his profession, in which he had left certain legacies to certain persons, and he had, in addition to the form of the rescript, added a prohibition and a penalty of nullity against the legatees who would presume to subject the bequeathed properties to a mortgage. The question was raised: "Can and in what way can the prohibition, of which we are speaking, imposed by the testator be maintained against the legatees?" The Sacred Congregation responded: "It cannot be maintained." Finally, Angelo's nephews maintained that they could not defend themselves against their father by prescription, because, just as he was incapable of owning property by hereditary title, so too he was incapable of acquiring it by prescription, or by any other means, just as a slave to whom the ownership of property is entirely forbidden by the law of the Caesars. If Angelo had other valid claims against his nephews, he should have pursued them in a separate legal action, if, and to the extent, that it was legally permissible.

OBSERVATIONS ON THE CASE PROPOSED EX OFFICIO. — Although religious men are clearly incapable of actively making wills, nevertheless, under just circumstances, the Supreme Pontiff, by virtue of his supreme authority, can grant both privileges to religious men, and there could be cited many examples of this, some of which are mentioned in Folium S. C. Conc. in Bononien. of June 3, 1784, §. There are no lacking examples. Indeed, even according to ordinary law, there are cases in which religious

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men, as long as they live, acquire the right to use and enjoy inheritances bequeathed to them.

[*Latin ed. p. 227*]

CONCERNING THE NULLITY OF A WILL, ETC. 227. Thus is the case of a Regular Canon who is raised to the episcopate, who, concerning property, is not at all prohibited from acquiring inheritances after leaving the religious life, with the favor of his Church; nor does the renunciation of goods made during his profession impede this; for this does not extend to inheritances which were not acquired by another before the episcopate, as defined by the Sacred Congregation in Naples on December 7, 1639, in volume 16, decree, page 306. (1) Thus also is the case of a Regular Canon who was appointed to the secular care of souls, as happened in Firman, on May 23, 1722, and on July 7 of the following year, in which, to a certain Adam, a Regular Canon of the Lateran Palace, raised to a secular parish, the Sacred Order granted the free use of an inheritance bequeathed to him, during his lifetime. Hubium, "Concerning what is to be done in this case," C. E. p. and Reg. on January 23, 1863, responded: Affirmative, and considering the particular circumstances, it should be requested of the Most Holy [Father] for permission for the priest Angelus to retain the goods during his life, saving, however, the property in favor of the legitimate heirs of Seraphina N.N.

RESOLUTION OF A DOUBT. — From the Sacred Congregations:

I. Regular Canons are ordinarily capable of possessing in common, not individually.

II. However, the Brothers of St. Francis, the Capuchins, and the Observant Minorites are specifically excepted, who are not considered capable of possessing, either in common or individually.

III. Therefore, with these excepted, if any inheritance or legacy comes to a religious, the Religious Order succeeds in its place.

IV. The Supreme Pontiff, with just reasons presented, sometimes grants an indulgence to Regular Canons who are lacking in the power to make a will, either actively or passively.

The following questions were raised in that case:

I. "Does a Regular Canon who is raised to the episcopate recover the right of possessing inheritances bequeathed to him after assuming the episcopate, concerning the property thereof, for the benefit of his Church, and concerning the use thereof, for his own benefit?"

II. "Does the aforementioned cession and renunciation of such inheritances, made in favor of a brother, impede this, according to the prescription of the Holy Council of Trent, session 25, chapter 16, concerning Regular Canons?"

The Sacred Congregation responded:

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To I. He recovers the right of succeeding to inheritances bequeathed to him after assuming the episcopate, concerning the property thereof, for the benefit of his Church, and concerning the use thereof, for his own benefit.

To II. The aforementioned cession and renunciation does not impede this concerning inheritances which were not acquired by another before the assumption of the episcopate.

[*Latin ed. p. 228*]

228 CONCERNING THE NULLITY OF A WILL, ETC., it is decreed that wills may be made, and inheritances and legacies received. IV. Regular Bishops who have been appointed to the episcopate may receive inheritances and legacies bequeathed to them after their episcopate. VI. This is to be understood in such a way that they acquire the free use and enjoyment of them as long as they live, but the property itself remains with the Church to which they are bound. VII. A Canon Regular, raised to a secular parish, may also, as regards the use and enjoyment, receive and retain inheritances and legacies that come to him in the future.

EMPHYTEUSIS. March 1, 1861. Summary of the case. In a certain church dedicated to the Most Holy Virgin Mary, there exists a benefice subject to the patronage of a certain Illustrious person; and among the properties that constitute the endowment of the benefice, there is a considerable field which yielded an annual income of eighteen scudi, and which would yield a much more abundant income if certain improvements, commonly called "ameliorations," were made to it. Seeing this, the Rector of the benefice, named Salvator, sought out a man who would take the field in perpetual emphyteusis, promising him an annual rent of thirty-eight scudi. Therefore, the same Rector, without informing his Illustrious Patron of this matter, but with the approval of the Sacred Congregation of Bishops and Regular Canons, and having obtained permission, publicly announced edicts in which those who wished to take the emphyteusis were invited. However, only one man appeared, and no one else. Therefore, according to the decree of the Sacred Congregation of Bishops and Regular Canons, the emphyteusis was granted to him, with the reservation of the right of the Twentieth (i.e., the right to collect a tax of one-twentieth of the income), in accordance with the General Decrees of the same Sacred Congregation (1).

Having initiated the competition for the Twentieth, no one came forward. But when the experiment of the Sixth (i.e., the right to collect a tax of one-sixth of the income) was completed, a certain Titus was found who offered to pay a canon of 43 scudi. This offer (i) See Appendix IX.

[*Latin ed. p. 229*]

EMPHYTEUSIS. After the matter had been deliberated upon, he did not hesitate to accept it entirely. When the matter had been brought to the point where a definitive agreement could be concluded with that individ-

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ual, Dynasta, the patron of this undertaking, having been informed by the Sacred Congregation of Bishops and Regular Canons, presented a petition to Le Conquet, without any prior consent, and indeed, completely unaware, that he was being drawn into an Emphyteusis contract; and therefore, he demanded that the acts thus celebrated be rescinded. The Ordinary, having been questioned about this matter, wrote to the Sacred Congregation, stating that, as far as he could see, it was not possible to celebrate the definitive agreement, unless the consent of the patron was considered absolutely necessary for the conclusion of the contract by the Sacred Congregation.

A brief discussion. WHAT THE PATRON OBJECTED TO. The Most Reverend Dynasta, the patron, claimed that all the acts were invalid, as he maintained that the rescript from the Sacred Congregation of Bishops and Regular Canons was vitiated by fraud and deceit; for in the prayers, no mention of the patronage had been made, no notification had been given to the patron regarding the celebration of the Emphyteusis, nor had his consent been obtained; moreover, the Emphyteusis was to last forever, which is contrary to the ordinary discipline of the Sacred Congregation; and finally, the contract or agreement was proposed by the beneficiary, who is not the true owner of the benefits, but merely an administrator. Finally, the same patron, when the Emphyteusis should have been fully carried out according to the decree of the Sacred Congregation, offered himself, for the purpose of taking over that contract himself, under the same terms and conditions.

WHAT THE DELIBERATOR SHOULD REPLY. He was entirely correct in demonstrating that the acts, which had taken place in three instances, had been absolutely valid according to the General Decrees of the Sacred Congregation, and therefore, there was nothing to prevent the stipulation of the agreement; indeed, he maintained that it could not be denied without injustice in this situation. For otherwise, the intervention or consent of the patron is not required, but on the contrary, he is prohibited from interfering in the administration of the beneficial funds. Since, however, permission had been requested from the Sacred Congregation, and the Ordinary, having been informed of the truth of the prayers, acknowledged and approved the evident benefit to the institution, it is clear that there is nothing left to do but to proceed with the matter.

[*Latin ed. p. 230*]

230. EMPHYTEUSIS. It should be declared that it is absolute in all respects, and therefore, nothing should hinder the completion of the transaction. WHAT SHOULD BE CONSIDERED FROM AN OFFICIAL POINT OF VIEW. — According to the decree of the Council of Trent, session 24, chapter 3, concerning Reform, it is forbidden for the patrons of benefices to presume to interfere in the administration of the goods pertaining to those benefices. Nevertheless, it is not for this reason that they are deprived of

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the right to oversee, so that the same administration may proceed correctly, and the endowment of the benefice may not be squandered. On this matter, the Doctors distinguish three kinds of administration. One is that of authority, and this belongs solely to the Bishop. Another is that of the minister, and this belongs to the steward, who should be, or ought to be, a cleric. The third is that of foresight and diligence, and this pertains to the laity, such as the patron. Cardinal De Luca, from *Miscellaneae Disputationes*, 3, 5, n. ii. Moreover, the interpreters of canon law raise the question in this matter: whether the consent of the patrons is absolutely necessary for the alienation of the funds of benefices. Therefore, they establish a distinction between voluntary and necessary alienation, and for the latter, they teach that the consent of the patron is not required by necessity of the act or validity, but only out of a certain propriety and honesty. Regarding the other, they believe that it is proper for the patron to oppose, to contradict, and to interpose his dissent: unless that the opposition (as Fargna, *De Jur. Patron.*, p. 1, canon IV, title VI, w.) or "dissent of the patron" should be considered, if he himself alleges a reasonable and serious cause, which involves a grave prejudice to the church, otherwise, if no such prejudice is presented. Indeed, if the alienation occurs with the cause known beforehand to the Holy See, and with its consent already obtained, it is clear that the patron can no longer oppose, even if he has not been consulted at all: for a serious and reasonable cause for opposition cannot exist, after the Holy See has diligently investigated all that was necessary to know, and has approved the alienation, which, in the case in question, clearly served the best interests. Doubt. "How and in what manner should the claims of the patron be considered in such a case?"

[*Latin ed. p. 231*]

EMPHYTEUSIS. RESOLUTION OF A DOUBT. — On March 3, 1861. The Fathers responded negatively to a question.

COLLECTED POINTS: I. It is forbidden for the Patron to interfere in the administration of beneficed property. II. However, the Patron is not deprived of the right to oversee, so that the beneficed property is not mismanaged. III. In the alienation of beneficed property, the consent of the Patron is not required, when a grave and reasonable cause for the alienation is not opposed by him, and otherwise, the solemnities prescribed by canon law are observed.

RENUNCIATION. On May 8, 1864. Summary of the case.

When a Parish Priest of a certain town, through a bad habit with a woman and an immoral life, caused spiritual offense to the people, and after being instructed by the diocesan Bishop about this matter, he was subjected to repeated punishments. Since he did not reform his wicked way of life, nor showed any signs of repentance, the same Bishop exiled him to another monastery for spiritual exercises, from which he

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would never return to his parish. In this situation, the Parish Priest, unknown to the Bishop, went to Rome, and presented his complaints to the Sacred Congregation and the Royal Congregation, alleging more grievances than he had actually suffered from the Bishop. Therefore, the Sacred Congregation remitted the matter to the Bishop, and urged him to investigate the accusations made against the Parish Priest, according to the norms prescribed by canon law. However, the Bishop, who had previously been unable to persuade the Parish Priest to renounce his benefice, preferred to resume these proceedings, and to urge them more strongly, promising the Parish Priest another assignment, from which he would receive support: and this matter was resolved in favor of the Bishop. For the Parish Priest, at last, took action and sent a messenger to his parish, and another received a portion in the church in his place.

[*Latin ed. p. 232*]

232 "DECLARATION. He sought to reach the town of *planum*. Therefore, on August 15, 1859, the act of declaration, which he claimed he had sent spontaneously and freely, was delivered to the Episcopal Curia. The Curia, on the same day, issued an act of acceptance, and it was stated therein that a corporal oath (that is, as if personally administered) had been added by the Parish Priest. However, it should be known that on that day, August 15th, the Parish Priest was in another city, which was thirty or forty miles distant from the Curia, by order of the civil authorities of the diocese where the Curia was located. From this, it was clear that the act of acceptance could not have been completed on the same day that the act of declaration was presented, and much less could it have been done in such a way that the Parish Priest, as if present, administered the oath, unless he had been miraculously endowed with the gift of bilocation; for otherwise, iron would not have yielded to the swiftness that steam-powered carriages could achieve. Nevertheless, the Parish Priest immediately proceeded to the aforementioned church, and he was duly admitted there by the clergy without any contradiction. After having lived there peacefully for about two years, and having been distressed by these matters, he again submitted his prayers to the Sacred Congregation of the Council and the Regular Canons, in which he lamented that he had been forced to renounce [his office]; and therefore, he requested that the renunciation be declared null and void, especially since the act of acceptance was afflicted with a double flaw, namely, the date and the corporal oath, as noted above, should be considered as not having been given.

SYNOPTIC DISCUSSION.

THE POINTS OF REASON PRESENTED BY THE PARISH PRIEST.

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According to the sacred Canons, a renunciation of benefices cannot be considered valid unless certain, defined, and observed formalities have been observed. Although the inquiry omitted to investigate whether the place for the observance of these formalities had been provided, nevertheless, the principal and primary matter to be considered was that the renunciation must not be issued by the beneficiary unless it is formally accepted by a superior. But in this case, it was clear that the act of acceptance had not been issued by the superior; for that which is not acted upon has no effect whatsoever. Furthermore, there was no doubt about the nullity; indeed, if it is said that the acceptance was made on August 15th, and that, moreover, an oath was pronounced by the declarant in the presence of others, when in reality neither of these things is true, then the matter is clear.

[*Latin ed. p. 233*]

RENUNCIATION. 233 It would be wrongly objected that it is not necessary for the renunciation and acceptance to be completed in the same context, since the Bishop could complete the acceptance at any time. It is answered that this is true only when the matter is still whole, that is, when the one renouncing has not yet revoked the act of renunciation, but not otherwise, as was clearly established by the prayers of the Sacred Congregation. See Ferraris, V. Renunciatio, nos. 32 and 33. Furthermore, it does not at all help to claim that the renunciation from the Orator had been ratified by the pension received in the church, which he had accepted and had been receiving for two years. For what is defective from the beginning cannot be healed by the passage of time; especially since we are dealing with a pension, which is not included among the benefits that can be transferred by a parochial title, by which moreover the Orator used the property as if it were sacred.

WHAT WOULD BE SAID TO THE PAROCHIAL VICAR?—The canonical cause, by which it was permissible for the Orator to leave the parish, was abundantly present, indeed, it was such that it obligated him to leave it, namely, the scandal that he presented to the people through his dishonorable life. Furthermore, it was certain that the Orator had issued the renunciation, and the Bishop had issued the acceptance: both were indeed presented in extenso among the documents. If, however, there was an error in the date, and also in the personal oath, this error did not concern the substance of the act, but only accidental matters. Even with these things considered, it cannot be denied that the Bishop truly did not make room for the acceptance. Moreover, even someone who has barely touched the threshold of canon law knows that a canonical resignation is divided into two parts, namely, an express one and a tacit one. Although one might wish to concede something, the express resignation, of which we have spoken thus far, should not be considered; nevertheless, another cannot be denied, which is present when an act is made that necessarily carries it with it. For

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example, in an emphyteusis, if the useful lord freely pays the canon to the direct lord, the emphyteusis itself is said to be recognized and admitted. Indeed, the Orator had issued the renunciation on the condition that a portion would be assigned to him in the aforementioned church: if, therefore, the condition was accepted—

[*Latin ed. p. 234*]

234. RENUNCIATION. It ought to be said that he built, and that he received the renunciation which the parishioner brought with him. Cap. 2 of the Transmission of Benefices. Cap. Concerning these matters, see Barbosa, *Ius Ecc. Univ.*, book 3, chapter 13, paragraph 40 and following; Piringh., book 1, title 9, paragraph 3; Reinf., ibid., paragraph 10. However, whatever the circumstances may be, since the salvation of the people is the supreme law, and the restoration of the parish priest to the relinquished parish would undoubtedly be detrimental to the spiritual well-being of the people, it is clear that, as all the circumstances in the case seem to confirm, the Bishop earnestly implored the Sacred Congregation, so that, if perhaps anything less than perfectly correct had been admitted in this entire matter, it might be supported by an apostolic sanction, so that what has been done might be permitted to remain in its full force. "A Doubt: Whether and how the claims of the Orator of N. D. should be considered in this case." RESOLUTION OF THE DOUBT. — The Sacred Congregation, after deliberation, on May 8, 1864, responded: "Negatively, maintaining the favor of the Priest Orator of N. D. in the received parish of St. Lawrence, having given his word to the Most Holy."

FROM THIS, ONE MAY GATHER:

I. That resignations of benefices must be issued for certain reasons prescribed in canon law, and that they are not valid unless accepted by a superior.

II. That a renunciation can be divided into two kinds: namely, an express renunciation, and a tacit renunciation.

III. That resignations which may be subject to some defect can be validated by the Apostolic See, if a just and reasonable cause is present (1).

(i) He who is able, for just reasons, to deprive someone of his benefice, without observing all the prescribed formalities, can undoubtedly accept a renunciation issued by the same person, even if some formality, or external form, required for the validity of the act, has been omitted. In the case, however, in order to remove any doubt, the Sacred Congregation seems to have added a clause regarding the word given to the Most Holy, by which

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the acceptance was validated, should a defect have occurred.

[*Latin ed. p. 235*]

233 FROM THE SACRED CONGREGATION OF RITES, REGARDING THE BEATIFICATION AND CANONIZATION OF THE VENERABLE SERVANT OF GOD, VINCENT, RECTOR OF THE PARISH OF ROMA IN THE TOWN OF HERCULANEUM, IN THE DIOCESE OF NEAPLES. DECREE. — "Since it was necessary to again deliberate in the Ordinary Congregation of Sacred Rites concerning the validity of all the proceedings undertaken in the cause of the aforementioned Venerable Servant of God, Vincent, at the request of the Most Eminent and Reverend Cardinal Alexander Barnabò, Promoter of the Cause, and the Reverend Father Ianuario Battiloro, Postulator of the same Cause, the following question was proposed in the Ordinary Congregation of Sacred Rites, held this day at the Vatican: — Whether it is established that the proceedings, both those carried out under Apostolic and those under Ordinary authority, are valid and relevant; whether the witnesses have been rightly and properly examined; and whether the documents produced have been legitimately considered in the case and for the purpose in question? — After careful deliberation by the Most Eminent and Reverend Fathers Prefects of the Sacred Rites, and after hearing the Reverend Father Peter Minetti, Promoter of the Holy Faith, they declared: — 'Affirmatively, with the understanding that the fifteenth and forty-fifth witnesses from the Ordinary Process are to be excluded, and that the twenty-ninth and thirty-second witnesses are to be considered as witnesses.' Dated September 16, 1865." "Subsequently, a faithful report on the foregoing was made to His Holiness, Pope Pius IX, by the undersigned Substitute of the Secretariat of the Sacred Congregation of Rites; and His Holiness approved and confirmed the judgment of the Sacred Congregation. Dated September 21, of the same month and year." C. The Bishop of Portua and S. Rufina, S. R. G. Prefect. CARDINAL PATRIZI, for the Reverend Father. DOMINICO JOSEPHUS BABIOLINI CICCOLINI, Substitute. Secretary.

[*Latin ed. p. 236*]

236. Concerning the CONFIRMATION of the public ecclesiastical cult rendered to the Servant of God, Cherubino Testa, a priest of the Order of Eremites of Saint Augustine, from time immemorial, a decree was issued to the aforementioned priest of the same Order, now beatified. — "Since the Reverend Father, Brother Nicholas Primavera, General Postulator of the Causes of Beatification and Canonization of the Order of Eremites of Saint Augustine, has judged that, with sufficiently valid proofs, he can demonstrate before the Sacred Congregation for Rites that the Servant of God, Cherubino Testa, a priest of Avigliana, of the same Order, has been publicly and ecclesiastically venerated from time immemorial, the under-

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signed Cardinal Prefect and Promoter of the Cause, at the request of the aforementioned Postulator, proposed the following question in the Ordinary Sessions of the Sacred Rites held today at the Quirinal: 'Does it appear that a public ecclesiastical cult has been rendered to the Servant of God from time immemorial, or does this case fall under an exception from the decrees of Pope Urban VIII?' The Reverend and Most Reverend Fathers entrusted with the safeguarding of the Rites, after carefully considering the presented proofs, and after hearing the voice and writings of the Reverend Father, Dominic Minetti, Promoter of the Holy Faith, judged it necessary to respond. — 'Affirmatively, or it appears to be a case of exception, if it pleases the Most Holy [Father]. On September 16, 1865.' " Subsequently, a faithful report on the aforementioned matters was made to the Most Holy Lord, our Pope Pius IX, by the undersigned Substitute of the Secretariat of the Sacred Congregation for Rites; His Holiness, considering the judgment of the Sacred Congregation to be sound, deigned to confirm the public ecclesiastical cult rendered from time immemorial to the Blessed Cherubino Testa of Avigliana, a priest of the Order of Eremites of Saint Augustine. On the 21st day of the same month and year." C. The Bishop of Portuen and Saint Rufina, Cardinal Patrizi, Prefect of the Sacred Rites. For the Reverend Father, Dominic Bartoni, Secretary. Joseph Ciccolini, Substitute. In place of the Seal.

[*Latin ed. p. 237*]

237 ROME, or ALBANO. CONCERNING THE BEATIFICATION AND CANONIZATION OF THE VENERABLE SERVANT OF GOD GASPAR DEL BUFALO, RECTOR OF THE CHURCH OF SAINT MARK IN THE CITY, AND FOUNDER OF THE CONGREGATION OF THE MOST PRECIOUS BLOOD. DECREE. – "In the cause of beatification and canonization of the aforementioned Venerable Servant of God Gaspar Del Bufalo, while the matter was being considered in the Ordinary Congregation of Sacred Rites concerning the validity of all proceedings in said cause, the Reverend Father Francis, a member of the Apostolic Missionaries Congregation of the Most Precious Blood of Our Lord Jesus Christ, and Postulator of the cause, obtained that the following question be proposed to the Most Eminent and Reverend Cardinal Ludovico Altieri, Prefect of the aforementioned cause, at the Ordinary Congregations of Sacred Rites held today at the Quirinal: 'Whether it is established that the proceedings, both those carried out by Apostolic and by Ordinary authority, are valid and relevant; whether the witnesses have been duly and properly examined; and whether the documents produced have been legitimately obtained and are pertinent to the case and to the purpose in question?' – Furthermore, the Most Eminent and Reverend Fathers entrusted with the preservation of the sacred rites, after a careful examination of all matters, and after hearing the Reverend Father Peter Minetti, Promoter of the Holy Office, judged it necessary to record:

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'It is established.' – On September 16, 1865." "The aforementioned matters having been faithfully reported to His Holiness, Pope Pius IX, by the undersigned Substitute of the Congregation of Sacred Rites, His Holiness deigned to ratify and confirm the judgment of the Sacred Congregation. On the 21st day of the same month and year." C. The Bishop of Portuen and S. Rufinae, CARDINAL PATRIZI, S. R. C., Prefect. For the Most Holy Father, DOMINICO BAKTOLINI, Secretary. JOSEPHUS CICCOLINI, in place of the Seal. Substitute.

[*Latin ed. p. 238*]

2S8 DECREE GENERAL. On January 21, 1864. "Since certain Ordinaries throughout the world have repeatedly inquired, and most recently from the Holy See itself, whether the Feast of Saint Andrew Avellino, Confessor, should be observed in the universal Church on the fourth of November with the lesser double rite, as indicated in the more recent editions of the Breviary and the Roman Missal; the undersigned Secretary of the Sacred Congregation has deemed it his duty, under the authority of His Holiness Pope Pius IX, to seek divine guidance on this matter. His Holiness, moreover, has graciously declared that the Feast of Saint Andrew Avellino, Confessor, may be observed by both the clergy of the City and of the world, including religious, with the lesser double rite, as is customary in the esteemed City and in many dioceses; provided that the rubrics are observed. Contrary opinions notwithstanding." January 21, 1864. D. BARTOLINI, Secretary of the Sacred Congregation. CORDUBEN. December 20, 1861. "Since, for many years, communities of Religious men have sadly disappeared in Spain, but nevertheless many of their churches remain dedicated to divine worship, and in them the Directory or calendar of the respective Order is still used, especially in those in which religious of the same Order serve as chaplains, the Most Reverend John Alphonsus de Alburquerque, Bishop of Corduba, in order to resolve the questions that frequently arise among Religious and secular priests concerning the celebration of Masses in such churches, has deemed it his duty, in the exercise of his pastoral office, to humbly request a solution to the following doubts from the Sacred Congregation of Rites." Doubts. I. "Whether, in a church belonging to a suppressed monastery, the calendar of the Order should be retained for the celebration of Mass, both by secular clergy and by Religious of the same Order to which the monastery belonged, or whether the diocesan calendar should be adopted."

[*Latin ed. p. 239*]

I. "Whether the same rule should be observed even in a church whose chaplain is a Religious of the Order to which that rule pertained." II. "Whether on the feasts of the titular saint of a church, or of a monastery, and of the founder of the Order to which the church itself belongs, Masses

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may be celebrated on that feast day, even if another feast day occurs in the diocesan calendar."

The Sacred Congregation of Rites, in ordinary sessions held at the Vatican, with the undersigned Secretary present, having carefully considered all matters, decided to respond as follows:

To I: Negatively to the first part, affirmatively to the second.

To II: As provided in the preceding.

To III: Only on the feast day of the titular saint of the church, and not of the monastery.

And thus it was written on December 20, 1864.

C. The Bishop of Portuense and Rufinae, Cardinal PATRIZI, Prefect.

D. BARTOLINIS, Secretary of the Sacred Rites Congregation.

From which the following may be deduced:

I. That, although unjustly, the suppression of a Religious Order suspends at least those privileges which were granted to the Order as a moral body, or as a society living under a regular discipline.

II. That, since those privileges were granted to a church in view of such a society, it necessarily follows that, with the cessation of that cause, the privileges granted cease, and that the privileges by which a particular church enjoys certain benefits, in view of that existing cause, also cease.

III. That, when such privileges cease, common law should take precedence (1).

(1) From the various cases presented, one can discern the doctrinal consistency that prevails within the Sacred Congregations. For example, from the case of the Sacred Congregation of Bishops and Regular Canons concerning the law of funerals, dated February 26, 1864, page 164; and also from the case of the Sacred Congregation of the Council concerning a private oratory, dated February 27, 1864, page 82.

[*Latin ed. p. 240*]

240 OF THE MINOR ORDER OF SAINT FRANCIS OF THE OBSERVANCE. April 8, 1860. "Since the Sacred Congregation of Rites, questioned on March 12, 1836, in Trent, regarding whether the 'Litanies of the Saints, according to the rubric' for the Brothers of the Minor Order of Saint Francis, arranged according to Apostolic Indult, were to be recited only by them, by order, on the Feast of Saint Mark and in Supplications," had responded affirmatively; it happened that this response caused anxieties and perplexities for Religious who are concerned with souls, and for Religious of those convents which have an attached parish church. To remove all anxiety and perplexity, the Reverend Father Theophilus Boghetti, Custos of the Minor Order of the Observance in Etruria, and Parish Priest of the Church of the Most Holy Savior, locally known as Saint Francis of Pietrasanta, in

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the Archdiocese of Pisa, proposed the following questions to the Sacred Congregation.

I. "In those convents in which the Religious is the only Parish Priest present with the people in processions, are the Litanies common to the Church, or rather, are they to be sung or recited?"

II. "And, in the case that the common Litanies are to be sung or recited, does the Parish Priest fulfill his obligation by reciting them, or rather, must he repeat the Litanies of the Order?"

III. "In convents in which all the Religious participate in processions, according to a laudable custom, if the people do not wish to recite the Litanies of the Order, must the same Religious family recite the Litanies of the Order, either in another procession or in the choir?"

And the same Sacred Congregation, in its ordinary meeting held at the Vatican buildings on the date indicated below, after mature and diligent consideration, decided to respond as follows:

To I: The common Litanies are to be recited.

To II: Affirmative, it suffices.

To III: Negative.

And thus it was written and it was ordered to be observed, on April 8, 1865.

C. Ep. Portuen. et S. Rufinae

Cardinal PATRIZI

S. R. C.

Prefect.

D. BARTOLINIS

R. C.

Secretary.

[*Latin ed. p. 241*]

241 FROM THE HOLY CONGREGATION FOR INDULGENCES. MEXICAN DIOCESE OF SANTA FE. September 18, 1862. DECREE. — "To the Sacred Congregation for Indulgences and Sacred Relics, a doubt was presented by the Reverend Bishop of Santa Fe in New Mexico, expressed in these words: 'Has a Confraternity of Our Lady of Mount Carmel been established? Is the priest authorized according to the rules permitted to bless the scapulars, and does a layperson go about distributing them throughout the territory? Can indulgences be gained in this manner?' (1) The same Holy Congregation, before making any decision, referred the matter to one of its Consultors, who judged that the response should be: 'No, with regard to those who have not received the blessed habit from the hand of a priest hav-

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ing the authority to do so.' Therefore, the Reverend Fathers, in the general meetings held on August 1 and 4, 1862, in the Vatican buildings, having approved the opinion of the Consultor, responded: 'No, according to the opinion of the Consultor; and having presented this matter to His Most Holy Father, Pope Pius IX, in an audience held on September 18, 1862, the same Most Holy Father graciously confirmed the response of the Reverend Fathers.' — Given in Rome, from the Secretary of the Holy Congregation for Indulgences. In the place of the Seal. F. Card. A. Archpriest (!). I have found the Statutes of the Confraternity of Our Lady of Mount Carmel. A priest legitimately appointed for this purpose blesses the scapulars according to the prescribed manner, and a layperson distributes these same scapulars throughout the entire territory. Can indulgences be gained in this manner? 16″

[*Latin ed. p. 242*]

§ 42. DIOCESE OF THE HOLY FAITH. Opinion of the Consultor. This is the opinion of the Carmelite Consultor, according to which the Holy Congregation decided to respond. ″Among the many and great means suitable for promoting the eternal salvation of the faithful, which abound in the pious Mother Church, the devout congregations, or confraternities, must be enumerated, as they are sources of good works; and, indeed, the group that bears the banner of the Blessed Virgin of Mount Carmel, honored with its sacred habit, certainly claims a place among them. For this very most benign Mother of God, the Virgin Mary, instituted this association, known and approved by the Church, and it confers spiritual benefits upon its members, which safely lead the pious and faithful follower of the law to the desired blessedness. (1) For, indeed, the confratres are enrolled in a special filial relationship to the Mother of God; their safety from dangers of soul and body is assured; they are aided in death; after their demise, they are quickly delivered by the purifying flames; they are enriched with a special participation in the good works and suffrages of the entire Carmelite Order. Moved by these considerations, the Supreme Pontiffs (2) not only confirmed the bond of the sacred scapular with their constitutions, but also further increased it with a generous grant of indulgences. By this attraction, countless devout individuals throughout the Church, persuaded of the truth of the promise made by the Mother of God to the Holy Simon Stock in favor of the confratres, religiously adopt this pious practice, and with great willingness give their name to the confraternity, and their hope is, for the most part, crowned with a most joyful outcome.″ ″Therefore, the most pious zeal of the Reverend Bishop of the Holy Faith in New Mexico is to be highly commended, who, when he rejoiced at the spread of the Society of the Brown Scapular among his people, rightly doubted, and was apprehensive, as to whether his flock could be legitimately and usefully incorporated into this mystical body of Carmel, since the priest there ap-

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pointed to this task (2) does not distribute the scapulars, and the laity themselves bring and offer the blessed scapulars. (2) *Videndi Daniel a Virgine Maria, Theophilus Ragnandus de Scapulari, Paulus ob omnibus Sanctis in clavi aurea, (2) John XXII, Alexander V, Clement VII, Paul III, St. Pius V, Gregory XIII, XIV, Clement X."

[*Latin ed. p. 243*]

THE DIOCESE OF THE HOLY FAITH. There are 243 Catholics dispersed throughout the territory; they inquired of the Sacred Congregation whether, by this manner of devotion, the faithful might obtain the indulgences granted to members of the Carmelite Order. "To resolve this doubt, it must be noted that all benefits, and spiritual graces of the Carmelite confraternity, accrue only to those who have been admitted to the confraternity in a canonically established manner, and not in any arbitrary way, but with the essential conditions observed." "This is expressly stated in the summary of indulgences recognized and approved by this Sacred Congregation, which is found in Buttar. Carmel, vol. 2, page 604: 'First of all, the faithful must enter into a confraternity canonically erected.' " Theodorus Stratius, Prior General of the Carmelites, wrote in his golden book on Indulgences, chapter 12: "Therefore, with regard to indulgences, it is first required that the faithful join some confraternity of the Holy Scapular, canonically erected." "The same is indicated by Daniel, by the Virgin Mary, by John of Lezana, by Ireneus of Saint James, by Simon Grassi, by Joseph of Jesus, and by all those who have written on this matter. And rightly so, for one could not disregard such a prescription. The Most Blessed Virgin intended that her promises, and the treasure of indulgences granted by the Supreme Pontiff, should benefit only those who are either professed or attached to the Carmelites. 'Receive this scapular of your Order, for you and for all Carmelites, a privilege,' the Most Holy Mother said to the most beloved Simon. The documents of Paul V and Clement X speak of admitting or attaching members to the confraternity, but only in a manner consistent with the rites of our Order. Those who are not legitimately attached to the pious confraternity, that is, not admitted with the essential conditions observed, do not deserve the title of confrere, nor the name. "Furthermore, the essential law for legitimate admission requires that each devotee immediately receive the habit from the hand of a Superior in the Order, or from another priest appointed for that purpose. This is evident from the Constitutions of our Order, printed in Rome in the year 1625, page 4, chapter 28, section 7: 'In order that someone may be received as a confrere in a proper and legitimate manner, two things are necessary, one of which is that the scapular be blessed by a Superior of the Order, or by one who has.'" "(1) 'And above all, the devotees must enter

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into a confraternity canonically erected.'"

[*Latin ed. p. 244*]

244 DIOCESE OF THE HOLY FAITH. Let him receive the scapular from that person. – The General Chapter of Theodorus Stratms, cited above, states: "For entry into the society, I consider two things necessary… the other is that he receive the blessed scapular from some Prelate of the Order, or from one who has authority from him, which all acknowledge." – The summary of indulgences, already mentioned, prescribes: – "And so that their entry may be legitimate, it is necessary that they receive the blessed scapular from the Superior of the Religious Order, or from another priest who has authority from the Superior (1)." – "This perfectly corresponds to the formula, or rite of admission, which we have prescribed in the aforementioned Constitutions of the Order, and which is found in the Breviary and ritual books. Indeed, the rite is arranged in such a way that first, prayers are offered by one who has authority for the purpose of admitting to the society; then, the formula of blessing the habit is performed by the same person; finally, the words are spoken by the priest himself as he puts on the habit, such as: "Receive, devoted man or woman, this blessed habit, etc." Therefore, through the force of this formula, which has been religiously put into practice, in order that the entry into the society may be legitimate, the habit must be immediately given by the one from whom it is also blessed; but the habit, which is the badge and emblem of the Society, must only be blessed by one who possesses the special power to do so, and therefore, it must be immediately given by him alone." – But all doubt on this matter is removed, and the practice or custom observed in the Order up to the present is clear. For, as the Blessed Augustine knows, the custom of the people of God, and the institutions of the elders, are to be observed as law; therefore, it is most certainly to be affirmed that our custom in the Order, which has been faithfully observed, is to recognize as legitimate confreres those who have received the habit from one who has the power to give it, and conversely, to consider as strangers and outsiders those who have not obtained the habit from one to whom the legitimate right to bestow it belongs; certainly, nothing is lacking in the conditions required by custom, either to authentically determine the meaning of the law, or to establish a new law, for our own. First of all, it is most clearly stated: "And so that the entry of these (devout) people may be legitimate, it is necessary that they receive the scapular blessed by the Superior of the Order, or by another priest who has authority from the Superior."

[*Latin ed. p. 245*]

DIOCESE OF THE HOLY FAITH. 245 It is praiseworthy, because nothing is more in conformity with right reason than to reserve the substantial acts

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pertaining to the reception of new members, solely and exclusively, for those who, within the society itself, possess a particular authority for that purpose. This is confirmed by the daily practice received from the elders, which has been faithfully and inviolably maintained, especially because it has always been understood by all within the Order that any admissions into the Sodality in which the aforementioned law had been violated would be null and void. I will provide evidence for every exception in the narration of Simon Grassi, etc., page 30. "However, it is always necessary that, when entering this Holy Company, any scapular be blessed and given by a person who has such authority from the Carmelite Order (1)." Joseph of Jesus, Instruction to the Layman, chapter 10, page 245. "And if someone does not receive the habit blessed by the priest, but puts it on himself, even though he has received it from the Company, he would not be properly received into the same (2)." Finally, a long duration of time is not required in this matter; for since the institution of the sacred Scapular Society, seven centuries have now passed, and yet... (1) "However, it is always necessary that, when entering this holy sodality, any scapular be blessed, and given by a person who has such authority from the Carmelite Order." (2) "And if someone does not receive the habit around his neck from a priest, but puts it on himself, even though he has received it from the sodality, he would not be properly admitted into the same sodality." To confirm this authority that the Consultor alleged, the Indult granted by the Most Reverend Pope Pius VI on January 8, 1803, to the Congregation of the Most Holy Redeemer founded by St. Alphonsus Maria de Liguori, is relevant. Indeed, when the Superior General of said Congregation explained that, during sacred missions, in the act of preaching, a great number of scapulars are presented to be blessed, which the faithful hold in their hands at that time, and then afterwards place upon themselves with their own hands, and he requested that, notwithstanding the omission of the prescribed form, it should be permissible for the aforementioned priests to bless these scapulars in the future, using only one formula, as if the prescribed form had been observed, the Most Holy Father approved the request. Afterwards, when a doubt arose as to whether, in the absence of the imposition of the scapular by the hand of a priest, and the explicit reception into the confraternity of the Order, the admission of the faithful into the confraternity would be valid, and whether they would enjoy the indulgences and graces; the Holy Congregation responded: Affirmative, with the understanding that, for the sake of caution regarding the past, and for the granting of an extension of indulgences, it is necessary for the future. Therefore, a special indult is required in the case where there is a reasonable reason why the faithful should place a blessed scapular upon themselves with their own hands, so

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that they may be considered properly enrolled.

[*Latin ed. p. 246*]

246. DIOCESE OF THE HOLY FAITH. In my opinion, within so long a period of time, no epoch can be assigned in which those associations, of which we are speaking, were not established by those who possessed special authority; namely, by the Superiors of the Order, or by those delegated by them, established, I say, through the tradition of the blessed habit. "Finally, this very Holy Congregation, in its decree of August 24, 1844, declared valid those receptions into the Society of Carmel in which the essential elements prescribed in the Order's rite had been observed. These essential elements, it designated, as the blessing and the imposition of the habit. But, as can be seen from the foregoing, such a blessing and the imposition of the sacred habit, according to the Carmelite rite, are legitimately permitted only to Bishops, and to those delegated by them, therefore also..." "It is clear, however, from what has been presented thus far: I. That no one belongs to the Confraternity of Carmel who has not legitimately entered it. II. That one can rejoice in a legitimate entrance if he has received the blessed habit from one who has the power to bestow it. III. That such authority is ordinarily possessed by the Superiors of the Order, and is found to be delegated without the right of further delegation, by those designated by them. IV. That those who have received the habit from one to whom neither ordinary nor delegated authority belongs, remain outside the Carmelite Society itself. V. That they cannot claim patronage of the Virgin, nor special participation in the goods of the Carmelite Order, nor those indulgences." (!) In the aforementioned decree of the Consultor, the third question is posed: "Whether the enrollment of the faithful in the aforementioned Confraternity, which is done by priests who have the authority, is valid, even if the form is not observed in the Ritual and Breviary of the Carmelite Order." The Holy Congregation responds: "Affirmatively, provided that the priests who have the authority do not fail in the essential elements, namely, in the blessing and the imposition of the habit, and in the reception into the Confraternity. Such a reception of the habit was already mentioned in the Constitution of Paul V, October 30, 1606; and also in the Breviary of Clement X, November 24, 1702, in which the Holy Pontiff confirms a certain decree of Ermi Sacripante, Protector of the Order of Carmelites, in which it is said: 'Those sent to a canonically erected Confraternity should, for the first time, receive the habit, or the scapular, blessed by the Superiors of the Order, or by another priest to whom the power of such blessing has been attributed.'"

[*Latin ed. p. 247*]

DIOCESE OF THE HOLY FAITH. 24? "Regarding the Most Reverend Prelate of New Mexico, concerning the Confraternity of the Holy Scapular,

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the following practice prevails: a layman receives the scapular, blessed by a priest having authority, and presents it to the faithful residing within the territory. It is indeed most fitting if this concerns those pious individuals who have already, for some time, received the holy habit directly from the aforementioned priest, with the authority to admit them. Although, with the first habit blessed, no further necessity exists, should it be lost or consumed, it will be highly commendable for these individuals also to receive a new blessing. (1) However, if the matter concerns faithful who have never, through the observance of the essential rites, legitimately entered the Society, it is clear that these remain outside the Society, since they could not, either legitimately or validly, be admitted into it. For a layman sent by a priest, neither he himself nor the sender, possessed the required authority to admit new members, not by himself, as is evident, nor by the sender, because a delegate in this case cannot delegate (2), since the will of the Order, granting such authority, positively resists this delegation. Therefore, the act by which those faithful are presumed to be admitted is null and invalid, lacking the essential conditions previously explained. In addition to what the Consultor indicated, a similar resolution was given to a question proposed on May 27, 1857. The question was: "Whether those who were duly admitted once into the Sodality of the Holy Scapular of the Blessed Virgin of Mount Carmel, and afterwards relinquished the sacred habit given to the members of the Sodality, are bound to receive a new sacred habit from one having authority, if they wish to obtain the indulgences granted by the Supreme Pontiffs to the aforementioned Sodality, or whether it suffices for them simply to resume the sacred habit." The Holy Congregation responded: negatively to the first part, and affirmatively to the second. Therefore, even if one has relinquished the sacred habit, and afterwards, after any interval of time, simply resumes it, he does not require a new admission, nor the reception of the sacred habit from one having authority. (2) This also follows from the general rule, which prescribes that he who is not delegated by the prince cannot delegate, except in cases expressly permitted. A certain response is given in the Holy Congregation regarding the following question: The parish priest of the place of La Savante, in the Diocese of Amiens, requesting from the Holy See an Indult to bless the sacred Scapular, proposed the following question to the Holy Congregation: "Can he communicate this same Indult to three of his confreres?" The Holy Congregation responded on August 6, 1841: in the affirmative. Each one should apply individually for the granting of the faculty to bless and bestow the sacred Scapular. The Holy Congregation considered that it should not directly answer the question, since there was another way to satisfy the request. And perhaps it would have given a negative response if it had addressed the matter directly. It seemed that

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the Indult granted by the Holy See to the parish priest was only personal.

[*Latin ed. p. 248*]

THE DIOCESE OF THE HOLY FAITH. It appears that the faithful of New Mexico, who receive the habit of the Carmelite Virgin, cannot obtain the indulgences legitimately granted to members of the confraternity. "Therefore, I would ask the Holy Congregation to provide a response to the Most Reverend Bishop who requests it, under this or a similar formula. Negatively, regarding those who, for entry into the Society, have not received the blessed habit from the hand of a priest having authority.)) "These things are said without prejudice to sound judgment, and under censure, etc." ANGERS. February 29, 1864. The Bishop of Angers, on behalf of the parish priest of the church commonly called "De Candé" in the same Diocese of Angers, humbly presented the following to the Most Holy Father. That Saint Maxentiolus, commonly called Saint Maxentiol, a disciple of Saint Martin of Tours, died in the city of Cunaud in the Diocese of Angers, and that all Christians have always venerated his relics. That the parish church has possessed his body since time immemorial. The reliquary that contains them dates to the 13th century, but it completely lacks an authentic inscription and seal. And that, in this state, it has been exposed for public veneration until recent years, but, for the purpose of restoring the church, it was transferred to the sacristy, where it is now under the seal of the Bishop's orator. It is impossible to prove that these are not the bones of Saint Maxentiolus, because the people recognize the relics under that name. That, last year, a delegation sent by the Bishop, composed of ecclesiastical officials, called for an examination of these bones, and no opposition was raised to their formal recognition. That a doctor recognized that the bones belonged to the same body, except for two, which are from another body.

[*Latin ed. p. 249*]

ANDEGAVEN. 249 In Gallia, vero, non est difficile in eodem urnula invenire corpora, aut partes corporum, quae plibus Sanctis pertinent. Hisce expositis, cum dubia exorta sint, idem Praesul se non auderet ea dirimere, sequentia proposuit Sacrae Congregationi resolvenda Dubia. I. « Cum desint authenticae litterae, an possessio ab immemorabili et non interrupta, ut etiam publicus cultus, idest, certitudo moralis, sit res sufficiens ut dicto S. Maxentioli corpori veneratio tribuatur.» II. «Quid de duobus ossibus pertinentibus alii corpori, minime vero illi S. Maxentioli, agendum sit, decetne in urna relinquere, aut illa extrahere oporteat?» Sacra Congregatio Indulgentiis Sacrisque Reliquiis praeposita, Die 29 Februarii 1864, censuit rescribendum: Ad I. Fideles non esse inquinelandos. Ad II. nihil esse innovandum. Ex ns COLLIGES: I. Non esse exturbandam longaevam venerationem fidelium erga Reliquias, quas sine dubitatione coluerunt atque colunt, uti reliquias alicuius Sancti, ex unico defectu

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legalis authenticitatis. II. Neque esse aliquid innovandum in Reliquiis in eadem capsa ab immemorabili veneratis, quamvis nonnullae reperiantur quae ad eumdem Sanctum cuius reliquiarum nomen gerit, pertinere non videantur (1). (1) Consentanea reputari potest Resolutio Sacrae Congregationis Indulgentiis, data 9 die Septembris 1675, ad sequens dubium: « An Cultrum e sepulchro Martyris sub eius dorso repertum in aliquo coemeterio, habendum sit pro instrumento Martyrii, et exponi publice possit ut ei Fideles cultum et venerationem exhibeant.» Ad quod S. Congregatio respondit: Cultrum eiusmodi exponi posse una cum Corpore, sed non solum et seorsum.

[*Latin ed. p. 250*]

250 FROM THE HOLY CONGREGATION. DECREE. Wednesday, the 26th of September, 1865. The Holy Congregation of Eminent and Reverend Cardinals of the Holy Roman Church, by order of the Most Holy Pope and the Holy Apostolic See, concerning the Index of Books of Defective Doctrine, and their condemnation, prohibition, expurgation, and permission throughout the Christian Republic, having met in the Vatican Palace, condemned and condemns, prohibits and forbids, or orders that the following works be referred to the Index of Prohibited Books:

* *Historya Filosofii W. Zarysie, seu Lineamenta historiae Philosophiae*, by Albert Schwgler, translated from the fourth German edition into the Polish language, with an Appendix on Philosophy in Poland. A. F. K. Varsaviae [Warsaw], 1868, 8vo.

* *L'Encyclique du 8 Décembre 1864 et la liberté. Adresse aux Évêques.* [The Encyclical of December 8, 1864, and Liberty. An Address to the Bishops.] Paris, E. Dento, Bookseller-Editor, 1865.

* *Ideal de la Humanidad para la vida con introducción y comentarios* [The Ideal of Humanity for Life, with an Introduction and Comments], by D. Julian Sanz del Rio. Madrid, Manuel Galiano Printing House, 1860.

* *Il Sacerdozio è il canchero che rosica il Genere umano* [The Priesthood is the Cancer that Devours the Human Race], by Giuli Zimmertzik; translation of the original German. First edition, 1865.

* *Storia ed esame dell' Enciclica e del Sillabo dell' 8 Décembre 1864* [History and Examination of the Encyclical and the Syllabus of December 8, 1864], by Abbot Antonino Isaia. Torino [Turin], 1865.

* *Roma papale, descritta in una serie di lettere con note* [Papal Rome, Described in a Series of Letters with Notes], by L. De Santis. Firenze [Florence], 1865.

Decree of the Holy Office, Thursday, the 26th of July, 1865.

Let no one of any rank or condition, in any place, and in any language, dare to publish, or to read or retain, the aforementioned works, but let them be handed over to the Ordinary of the place, or to the Inquisitors of heretical

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depravity, under the penalties indicated in the Index of Prohibited Books.

These things, which the Most Holy Pope has, through me, the undersigned, Secretary of the Holy Congregation, related to Your Holiness, have been approved by the Decree, and it is commanded to be promulgated. In witness whereof, etc.

Given in Rome, on the 30th of September, 1865.

ANTONINUS Cardinal De LUCA, Prefect.

Fr. ANGELUS VINCENTIUS MODKt, Order of Preachers, in place of the Seal of the Holy Congregation of the Secret.

The 30th of September, 1865, the aforementioned Decree was affixed and published at S. Mariae super Minerva, at the Basilica of the Prince of the Apostles, at the Palace of the Holy Office, at the doors of the Curia Innocentiana, and in other customary places in the City, by me, Aloysius Serafini, Apostolic Secretary.

Philippus Ossam, Secretary.

[*Latin ed. p. 251*]

251 APPENDIX IX. CONCERNING THE ALLOCATION AND ALIENATION OF CHURCH PROPERTY. Under this title comes a certain portion: Negative to the second resolution of the Sacred Congregation and the King, concerning certain decrees issued on this occasion, which are cited and contained in the following words in the cause explained above.

(1) Ad secundum pag. 228. The Episcopal Curia of Assisi, concerning ecclesiastical goods, issued Letters to the Sacred Congregation.

I. In ecclesiastical matters and Episcopal consultations, the laws promulgated by Benedict XIV in his Motu Proprio, published on March 4, 1835, are to be observed, which placed two questions, or doubts, before us, namely:

I. "Whether, for a legitimate offering of the sixth and twentieth, it is required that the sum of money have such force as to at least equal the twentieth and sixth part of the price already offered; or whether it suffices that whatever increase is offered, even above the best possible offering, or above those offerings which are made to a certain sum, be sufficient, and therefore, if someone offers, for example, ten scudi, or more, for the twentieth or sixth, does this suffice in lieu of the twentieth or sixth?"

II. "Can the benefit to the Church be increased by postponing the legitimate time for the offering, so that those who offer, if they so desire, may present new offerings, and will these offerings of the pious in Aversa be valid?"

The Sacred Congregation responded:

"To the first: Affirmative, to the first. For if an offeror were to promise, for example, 50 scudi for the twentieth or sixth, and the twentieth or sixth part of the price offered were greater than this sum, and, for example, amounted

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to 80 scudi; the bidder who proposed the first price, and to whom the property is to be alienated, is not obliged to accept this offering in lieu of the twentieth or sixth, and the ecclesiastical property in question shall be assigned to this bidder. However, the same would not be said if the price offered for the twentieth or sixth exceeded the sum of 50 scudi."

[*Latin ed. p. 252*]

292 APPENDIX IX. For the purpose of offering, ten gold coins are sent, within which period the offeror may declare his intention, or offer a sum greater than the declared amount, or even a sum exceeding the twentieth part; or, if he wishes, offer a sum greater than those offered.

VIII. "For the sixth offering, a period of three months is granted, beginning from the first day of the month in which the matter was adjudged; this period is granted to the offerors, not to others, and it is understood that the offer must be for a certain sum, and that sum must be added to the sums already offered."

IV. "If the proposed edicts have been issued by written decree of the Holy Congregation, and the period has elapsed, and the offers have been opened, new offers may be presented; or, all offers will be sent to the Holy Congregation, and the Holy Congregation, with the matter still in its entirety, may, at its own discretion, accept new offers, or modify them, or order that the edicts be presented anew."

V. "The same right to accept new offers, or to modify them, or even to order that the edicts be presented anew, pertains to the Holy Congregation, where such power has been granted to the Executor, for special reasons."

VI. "Each person may offer a sum of his own choosing to the person to whom the property has been adjudged, within twenty days; this period begins from the day on which the Executor of the Apostolic See has adjudged the matter."

VII. "If someone offers a sum within this period, then it is permissible for the person to whom the property has been adjudged to offer a sum greater than that offered, and he shall be granted ten days."

Rome, March 18, 1835.

T. A. Card. Sala, Prefect.

T. Archiep. Ephesinus, Secretary.

To this Decree of the Holy Congregation of Bishops and Regular Canons, Benedict XIV commanded the same Executor to observe the laws which he issued by his own motion on November 23, 1742, concerning the leasing of public properties; and the Holy Congregation prescribed that these laws be observed in all other alienations, in accordance with what he prescribed in Article I of this Decree. Therefore, the Constitution of Benedict XIV, issued by his own motion, which we have translated into the Latin language, is as follows: (1) "Addictionem in diem," by this example, Paul writes in his

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first letter to the Hebrews, chapter 5, verse 1: "ILLE IANUABIAS ABEAT." "FUNDUS CENTUAI PROXIMAS ESTO TIBI EMPTUS, NISI SI QUIS MELIOBEM CONDITIONEM FECERIT."

[*Latin ed. p. 253*]

»ix ix. « Whereas controversies, which, whether causing lesser or greater detriment to the public good, or to private interests, have arisen, and which have been confirmed by Us and by the Supreme Pontiffs, concerning the stipulations preceding the leases of ecclesiastical properties (1), and which, for the sake of the Oblators, must be superseded within twenty days from the date of deliberation; since these matters are of the utmost gravity, We deem it proper to refer them to the attention of Our supreme authority, so that those who have already completed the act of offering, and those who have been repulsed and defeated, as well as those who have offered nothing, may, as far as possible, have some cause for litigation removed, regarding the maximum offering to which the lease in question was deliberated, provided that such addition is not less than one-twentieth of the aforementioned offering, and therefore We decree and ordain that, henceforth, all those who intend to participate in the subsequent leases of ecclesiastical properties by the general Congregation, whether by Our customary edicts, or by Our and Our Successors' written decrees, or even by written documents, shall, on a specially approved day, present their written offers, and shall have them accepted and approved, subject to the condition of the addition in question. » I. « That at least one year before the date of the lease of each ecclesiastical property, those who intend to participate in the lease shall be invited, by Our customary edicts, to present their written offers on a special day designated for that purpose. » II. « That when the day appointed in the edicts arrives, in the full Cameral Congregation, the written offers shall be read aloud, and the lease shall be granted to him who has offered the most, and who is, therefore, deemed to have acquired the right to the lease, by the force of the deliberation and approval; provided, however, that another may appear within the aforementioned twenty-day period, who shall add at least one-twentieth of the aforementioned offer. » III. « That, after deliberation, conducted in the manner described above, a more substantial offer shall be admitted, and the stipulation concerning the addition in question shall be noted in the records of the Cameral Congregation; but without delay, another offer shall be admitted, if a more substantial offer is presented. » IV. « That, after the lapse of the twenty-day period, which is deemed to be reasonable, and in accordance with the present decree, if no one has appeared who has offered at least one-twentieth more than the offers presented, the privilege of leasing the ecclesiastical properties shall no longer be considered valid; but without delay, a more substantial offer shall be admitted. »

(1) We translate the italicized word "Appallo" into Latin as "Locationem

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vel Conduclionem."

[*Latin ed. p. 254*]

254 APPENDIX IX. let his will be done in the name of him to whom, from the very beginning, the offering was made, nor has the location been freed by others. But on the contrary, any may be admitted.» VI. «If, within that twenty-day period, more than one, or several, have remained who have offered larger or at least additional offerings, the case is considered where someone may then enjoy the privilege of our Chamber, either from among those who aspire to the management, or from those who have never aspired to it, the Chamberal Congregation will free him from the location, who has offered at least a twentieth part to the first or second offerer: but to those who offer more than a twentieth part, the Chamber will deliberate which location it will grant, the one which it judges to be best, or more than that. » V. <In order that, whether approved by Us, or by Our Successors in deliberation, the benefit of restitution, which belongs to the Fisco, may be granted, even if the thing is not yet completely restored, even if a stipulation has been made, even if the instrument itself has already been received, and the conductor possesses the thing; nothing else can be demanded from the conductor in this case, than that he denounce, personally and indeed personally, the addition of the twentieth part, or a greater part of the price offered by him, in addition to the price already offered.» «But since, if this restitution, in its entirety without any definition of time (as is fitting), is admitted, it is very difficult for the Chamber to find suitable Conductors, if, fearing that each one might be driven away, lest he be removed from the location, no other additions or offerings are admitted, except those of restitution in its entirety, after that time; therefore, we decree that the sixth offering be admitted, only in the name of this second, without delay, from the day on which the stipulation of the instrument is made; so that, either publicly or through a privilege, within three months after the instrument is made, no other additions or offerings shall be admitted, nor shall the location have been deliberated for him who is considered best, except for the aforementioned Addiction in diem. »

[*Latin ed. p. 255*]

ix. 255. We are judged among the offerers, VIII. "Finally, concerning these matters of leases and more, which have been acquired through prescription, causing burdens to those who desire to obtain them from the ecclesiastical jurisdiction, and incurring expenses, or daily disputes, we decree that whatever else may have been done concerning the stipulations of the Instrument, or concerning the stipulations made with the Conductors, without the possibility of refusal, we wish that within the same three-month interval, one-sixth of the offered sum, and the contract of rescission, be relinquished, lest a tribute, or a private tax, which is due from the place,

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be imposed; and therefore, that he to whom the lease is granted, in whatever manner the lease is extended and enlarged, as stated above, shall be released from *casus*, and from the special *chirograph*, and from the terms of the said tribute, or private tax, and that neither the Camera, nor the last offerer of expenses, which may have been incurred within the same time, shall in any way demand compensation, but only when and if he wishes to offer a greater sum, or whatever else may be decreed or determined in the future. XI. "That these things may be observed with all diligence in the future, and that this may be preferred to the invalid and null Instrument, we decree that after the three months have elapsed, the place of rescission of the contract shall no longer be valid for all leases, but *firmus* shall remain, and irrevocable for the entire time established, without any declaration of a judge, and in accordance with the form and conditions expressed in these prescriptions. However, the right of publication, the contract of *mrtio*, and the stipulation of dispute must be made in accordance with the law, and as the aforementioned leases must be understood and held according to the public edict, in accordance with the Apostolic constitutions, without any limitation of time, except if this has been specifically and expressly derogated from by Us or by Our Successors, and as We command and order, and as the law requires, that these deliberations, and..."

[*Latin ed. p. 256*]

256. That the prescriptions [contained herein] be observed inviolably, even if neither the accused nor the defendant were summoned, or cited, or heard, but rather [if] our firm will [demands it]. Wishing and decreeing that our Commissary of the Chamber, perceiving that this present document, or another in whose interest it may be, presumes to be present: We, by our own motion, constitute and declare, according to the Constitutions of Paul III and Paul IV, and according to the books, in accordance with the Bull of Pius IV, of our predecessors, that the registers are valid, and that they may have their full effect, concerning the alienation of property to the Church, to any and to everyone, and to our simple right and power of the Chamber, even though it obtains our subscription, and that nothing can be opposed to it, nor can its execution and validity be impaired by any subterfuge, deception, or other defect, or by any flaw in our will or intention; and that, therefore, it must always be judged, defined, and decided, and not interpreted, in our cases, in our missives, in our styles, customs, sentences, decrees, and in similar cases, by our Chamber, and by the General Treasurer, and by the full Chamber, and by any judge and tribunal, even if collegiate and composed of Cardinals, removing from them and from each and every one of those here mentioned, and verbatim inserting into the aforementioned [document] only what is necessary to give it full and express effect, we earnestly request. Given at the Apostolic Palace in Quirinal, this day, the twenty-third of November, in the year of Our Lord

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1742. BENEDICT, our POPE, XIV.

[*Latin ed. p. 257*]

257 FROM THE COUNCIL OF CONSTANTINOPLE. ON MARRIAGE. On December 29, 1862, Session 24, concerning the Reform of Marriage. A certain Greek-schismatic, named Seius, twenty years of age, having voluntarily joined the Turkish forces during the fervent war between the Turks and the Russians, and having been elevated with some military honor, was sent for the purpose of reinforcement to the city A. In this city, he was to be received, as a military guest, in the house of Titus, a Greek-Catholic, who had a single daughter, Caia, not yet fifteen years of age. Seius, captivated by his love for Caia, after two months from the time he had seen the girl, began to negotiate for marriage with her parents. Meanwhile, he proclaimed himself to be a rich and noble Boiari, and seemed to demonstrate that he was the son of a wealthy and noble family. For the name "Boiari" in that language denotes a certain class of wealthy and noble people. Furthermore, he presented himself to Caia's parents as being distinguished by honorable morals. Therefore, considering that it would be very advantageous for their daughter if they gave her to this young man in marriage, Titus sent a messenger to a noble man, B., who was a high official in the province and city from which Seius had originated, and asked him whether Seius was truly wealthy and noble, and whether he was indeed known for his good morals. Titus received the following response: "According to information obtained from a reliable source, the young man Seius is of honorable character; his conduct has been, for the most part, beyond reproach, and all who know him have assured me that he is endowed with good morals, without vices or defects." He was orphaned, and the condition of the fortunes of his parents was quite modest; nevertheless, his surviving aunt possesses property, and she treats him with kindness, and Seius will be one of her heirs. I have also learned from another source that this aunt will bestow a certain property upon Seius; and I have observed that Seius enjoys the favor of certain officials, who are powerful in the Prince's family, and under whose protection he can easily obtain..."

[*Latin ed. p. 258*]

258. MARRIAGES. "Nor could he fulfill his civil or military duties." After these events, the secretary Titus was foretold of many happy occurrences concerning his marriage. But not yet content with this, Titus sent his nephew, accompanied by Seius himself, to the same country, to diligently inquire into Seius's life, morals, and condition, and Titus received a reply by letter, confirming the previous reports, indeed, with some exaggeration, as Seius was described as possessing more property, with no mention made of whether he was the son of Boiarius. Having therefore such information about Seius, the parents of the girl consented to the marriage, and, hav-

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ing obtained a dispensation regarding the disparity of cult, the marriage was duly celebrated. After a few months had passed since this marriage contract, Titus, according to the agreements made, requested half of the expenses from Seius, which were being spent for the proper support of the couple. Seius, having confessed his poverty, declared himself unable to pay. Then, the same man's ignominy, his poverty, and his dissolute way of life were brought to light: indeed, even the name he had taken on appeared to be false; for he seemed to be called Seianus, not Seius (1). Furthermore, the depravity of his morals became evident, as he had already infected his wife with the French disease (syphilis). Therefore, five months after the marriage, Caia obtained a legitimate divorce. After four years, Titus petitioned the Bishop, presenting a written plea, to declare the marriage null and void, as it had been contracted due to an error concerning the person and a substantial quality of the person. The father of the girl urged the Bishop to issue a declaration of nullity so that his daughter could marry an Italian man, since Seius, or Seianus, had already gone to his province to contract other marriages. The entire course of these events was reported to the Holy Congregation of the Propagation of the Faith, which, among other things, stated: "We summoned Titus and his daughter, and we questioned them separately, whether they were prepared to swear that what they had stated in writing was true. They swore without any hesitation; indeed, the father swore that he had never intended to give his daughter to a fortune-hunter." (1) However, it is not entirely clear from the documents regarding the usurpation of this name. It is certain that he was called either Seius or Seianus, but when questioned about the difference in the name, he replied to his wife that it made no difference to him; and no further inquiry was made about this difference in names.

[*Latin ed. p. 259*]

MATRIMONII, 239 n. concerning a husband who is mistaken and despairing. But Caius swore that he had been "joined" to her, and that he had given his consent to the marriage, even though the condition had not been expressly stated, because he believed what he was told, namely, that he was a Boiarus, or a nobleman and wealthy man; and such qualities have always been considered to be a virtual consent. "And in truth," (the Bishop continues), "when Titus requested a dispensation from me regarding disparity of cult, I openly denied it to him. However, he insisted in a letter, writing that I only wanted to deny the dispensation to his daughter, and that I wanted to prevent her happiness, now that she had found a Boiarus, richly endowed with fortune, wealth, goods, carriages, horses, etc." "These things I say to Your Eminence, so that it may be known that the will of both the father and the daughter was, in this case, the principal cause, and according to St. Alphonsus de Liguori in his Moral Theology, book 2, on impediments, § 1, on the impediment of error concerning the end, then the error extends

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to the substance, because the quality is intended directly and principally, and the person less principally." With these things explained, the Bishop abstained from judgment. The examination of this case was referred to the tribunal of the Holy Inquisition, and an order was given to the same Bishop to complete the proceedings according to the Constitution of Benedict XIV, which begins *Dei miseratione*, and according to the instructions. The instructions, among other things, contained the order that prayers be renewed and offered in the name of Caius, and that trustworthy witnesses be presented, who, after a formal examination, would depose under oath what they knew. The witnesses who were subjected to the examination were none other than the father, the mother, and the girl, who all testified what has been explained above, especially insisting that, if it were known that Seius was not a Boiarus, nor an honorable man, the marriage would certainly not have been entered into. With these acts transmitted to Rome, the case was brought before the Holy Congregation of the Council, so that it might be considered economically, according to the mandate, with the opinion of a theologian and a canonist, and with the observations of the Defender of the Bond (1). After these things were completed, the case was presented under the following question. (1) In this case, the matrimonial cause is usually presented economically before the Holy Congregation of the Council, when the parties in dispute present the case without a clamorous judgment, without appointing Defenders in the city or procurators. Considering the true gravity of the case,

[*Latin ed. p. 260*]

MARRIAGES. Summarized in their entirety. Both the theologian and the canonist agreed on the doctrine concerning impediments to marriage; however, they differed regarding the application of the doctrine. The doctrine concerning such an impediment, which distinguishes between an error concerning the person and an error concerning a quality, is this: An error concerning the person renders a marriage null. For those who err concerning the person do not consent to that specific person with whom they are actually contracting, but rather to a completely different person, whom they conceive in their mind. Therefore, the marriage cannot stand. This is confirmed by the authority of St. Thomas, 1-2 q. 6 art. 8, and Sánchez, book 7 on Marriage, dispensation 18. However, an error concerning a quality, by itself, does not invalidate a marriage; nevertheless, it can render it null under certain circumstances. Namely, when a quality is added as a condition, and it is expressed to which the consent for marriage is attached, as if it were said in the contract: "I will marry you, provided that you are rich." In this case, if the condition is lacking, the consent is also lacking, and therefore, nothing is validly performed between the contracting parties. The other case is when an error concerning a quality is reduced to an error concerning the person, although the Doctors differ in determining

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the precise definition by which it can be accurately recognized when an error concerning a quality is reduced to an error concerning the person. In this manner, matrimonial causes are handled economically; indeed, two opinions are sought, one from a theologian and one from a canonist, each of whom examines the facts of the cause. Once these opinions are obtained, they are submitted along with the facts to the Defender of the Bond, who is obligated to make his observations, that is, to present everything that favors the validity of the marriage, so that, as far as possible, he always contends that the marriage is valid; or that it does not consist of a nullity; or, if a dispensation is sought for a marriage that is only valid, he must also contend that there is no place for a dispensation, either because it is doubtful whether the marriage is only valid, or because the just causes for a dispensation are lacking. After these deliberations, the cause is presented to the Sacred Congregation, which, after considering the opinions and observations, and other matters with its own wisdom, renders a judgment; and if the judgment is for the nullity of the marriage, the aforementioned Defender of the Bond, as if it were his own cause, again requests a hearing and prepares a new defense, according to the prescription of the Benedictine Constitution, the observance of which the Sacred Congregation constantly demands in matrimonial causes. And if, in this repeated presentation of the cause, something new arises concerning the facts, other opinions, as mentioned above, are sought from the theologian and the canonist. Thus, the Holy See proceeds with great caution in matrimonial causes!

[*Latin ed. p. 261*]

MARRIAGES. 261 Besides such cases, an error concerning a quality does not render a marriage null. Thus, St. Thomas, in his work, subtly states: "An error concerning a quality does not, by itself, invalidate a marriage; for such an error does not make the marriage involuntary." Every error is a cause of involuntariness, but not every error makes something simply involuntary; rather, only that error which concerns the quality itself and, by its very nature, is related to the essence of the contract; but when the quality is accidental, involuntariness is only taken in a certain sense. And the reason is that nothing is willed unless it is foreseen; when an error is in the apprehension of a thing not necessary for the essence of the contract, but in some accident, it makes the contract, as far as its essence is concerned, voluntary, and therefore simply so; but it is involuntary only in a certain sense, and with regard to that accident in which the error lies. However, as I said, there was disagreement in the application of this doctrine. The theologian believed that the error was in the person, or in a quality that is attributed to the substance or person. For example, a woman, fully convinced that she was marrying the son of a certain nobleman, married a man named Seian, a poor shepherd. Especially since it was firmly believed by the woman that the man was, in the vernacular language, both "Seium" and "Seianum."

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Therefore, the woman firmly believed that she was marrying one man, while she married another. Therefore, the theologian considered there to be no marriage. On the other hand, the canonist observed that the real difference in names was asserted in the documents, but not proven, and that in this difference of names, neither Titus, as a witness, had the force of argument, nor did the woman, Caius, have much influence. The family of Titus was not concerned whether Seius was descended from one or the other family, but rather about the qualities inherent in the person, whether he was the son of a wealthy man, and an honest young man, in which qualities she was deceived. Furthermore, the canonist maintained that the argument of Titus's family had force because, indeed, the marriage certainly would not have been entered into if it had been known that Seius was not the son of a nobleman, nor had he possessed any honor. Moreover, he pointed out that this conviction was not entirely certain. Indeed, in the testimony previously recounted by the Secretary B., it is clearly stated that Seius was from Orbais, and that his parents' fortune was of a very moderate status; hence, it could be inferred that he was not the son of a wealthy man.

[*Latin ed. p. 262*]

262 MARRIAGES. The Boiari. He did not, of himself, seek any wealth; rather, he could have done so, when he was still a young man of twenty years, and he obtained lower ranks in voluntary military service. Although, if Titii Nepos has exaggerated the testimony of Mr. B., or has added other things by which Seius is described as wealthy and possessing property, this Nepos, being of such tender age, and Seius himself, at that time, associated with him, should be given less credence. Moreover, the Nepos himself did not write that Seius was the son of a Boiari, but he remained completely silent regarding such a quality, which should have been paramount. Therefore, the matter appeared rather to be an obstacle to error, rather than a confirmation of it. For this reason, the Canonist was of the opinion that the pleas of Caia should not be considered.

OBSERVATIONS OF THE DEFENDER OF MARRIAGE EX OFFICIO. – The Defender of the marriage bond, before addressing the merits of the case, pointed out that the proceedings of the process had not been carried out according to the prescriptions of the Benedictine Constitution. For in the preparation of the records, the intervention of the Defender ex officio was lacking. Furthermore, only the Titii family was subjected to examination, when there were other witnesses who should have been subjected to examination, namely, Secretary B. and Titii's nephew. Therefore, the matter lacked any substantial basis for proof. For in very serious cases, as the Sacred Canons define marriage cases, witnesses must be of greater age, Argum., cap. licet 1 de Test., which was not the case with Caia's parents, he said. Therefore, lacking the necessary substance of proper proof, the woman's petition was to be rejected, already on this point.

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However, proceeding to the merits of the case, he argued that no error had occurred that vitiated the consent, either in regard to the person, or in regard to the qualities. He observed that there was no error of person, because Caia had prior knowledge, through sight, hearing, and conversations, of that individual person with whom she contracted marriage. Therefore, he argued, there was no error of person, which occurs when the contracting party believes that he is entering into marriage with a specific contracting party, and contracts with another different person, whom he neither wanted nor chose, as is explained by Conscius de Separator. I. i c. 2. Sánchez Z. 7 disp. 19 n. 28. He added that no error in the name, alleged with the authority of Sánchez, affected the validity of the marriage or the identity of the person.

[*Latin ed. p. 263*]

MATRIMONII. 263 *ioc. cit.* n. 38 dicit: «Matrimonium non vitiatur ex solo errore nominis, si de corpore constet.» (1) Deinde, procedendo ad errorem qualitatum, considerabat quod eiusmodi error non vitiat matrimonium, nisi si qualitas ad pactum deducta fuerit, vel nisi si in errore personae redundet. Hae duae limitationes non se verificabant in facto. Prima non se verificabat, quia ipsa Caia hoc fasset. Respondit enim iudici interroganti «se non appositam in contractu conditionem illam, 3) cum firmiter sibi persuasum esset, Seium esse filium divitis VJ Boiari, sine qua persuasione, numquam consensum dedisset.» Studebat vero excludere alteram limitationem, eo fere modo, quo Canonista in supra exposito voto disputaverat, et concludebat cum auctoritate Tropper de impediva, error n. 196. «Non » quaeritur Caia quid fecisses, sed quid feceris, seu an conlraxeris » absolute, non vero an conlraxisses; alioquin quam plurima coniugia periculo dissolutionis obnoxia erunt, si sufficeret aliquem » non fuisse contracturam , si postea primum cognita, antecedenter novisset.» Dubium. «An constet de nullitate matrimonii in casu.»

RESPONSIO.—Sacra Congregatio Concilii die 2 Iunii 1860, re discussa, a iudicio ferendo in causae merito abstinuit, et distulit resolutionem adiecta altera iniunctione hisce verbis: dilata (2), et expleatur processus iuxta instructiones dandas a D. Secretario una cum Defensore matrimonii.

Causae prosecutio. Cum in praecedentibus actis, examini subiecti tantum essent Caia, eiusque Parentes, novae instructiones datae sunt, ut coram Episcopo sive idonea ecclesiastica persona ab Episcopo deleganda, et altero ecclesiastico viro matrimonii defensore, examini subicerentur, si fieri possit, Secretarius B., nec non Nepos Titii. Hisce mandatis obsecutus Episcopus, ipsiusque Vicarius generalis, responsiones sibi traditas a Secretario B., nec non acta confecta super examine Nepotis in altera episcopali curia, cui subiectus ipsemet Nepos reperiebatur, aliorum insuper testium depositiones Romam transmiserunt.

(1) Vide Append. XI. in seq. fase.

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(2) Vide pag. 36 in nota.

[*Latin ed. p. 264*]

264. MARRIAGES. Furthermore, Secretary B. reported to the Bishop: that he had obtained information, which he had previously received from Titus, from officials of the public ministry. He stated that he did not know Seius. And he subsequently discovered these to be erroneous, especially concerning Seius himself. And although he was prepared to confirm these matters under oath, he did not consider it necessary, given the circumstances. Titus' nephew, examined before an ecclesiastical judge and defender of the marriage in another court, under oath, and in response to questions presented to him, testified among other things: that he had gone with Seius to Seius' city, where Seius was very well known. And that he had not received any instructions from Caius regarding obtaining information. He recounted the events in these words: "Seius, having stayed in Caius' house, inquired whether he was a man of sufficient means; he mentioned having some money in a deposit at the juvenile court, which he could not recover unless his older sister became his guardian. I do not know to what sum this money amounted. He also stated that Seius did not belong to a noble family, but was of civil status and possessed of honorable morals. He added that he had a right to the future inheritance of his aunt, without specifying in what this hoped-for inheritance consisted. Upon arriving in Seius' city, accompanied by Seius, I obtained information from a certain wealthy man, who told me that he did not know Seius, but assured me that all families of that name residing in that city were of honorable character and of civil status. I also received the same information from Secretary B., who knew Seius, and I heard others who spoke well of Seius. After these things, I wrote to Titus, confirming what Seius had revealed about himself. I am certain that the desire to obtain a useful position prevailed in Caius and his parents in order to bring about this marriage; indeed, I believe that if this marriage had not taken place, Caius would have obeyed the will of his parents, rather than subjecting himself to hardship. Furthermore, I believe that if Caius had not previously known Seius, he would not have married him, but would have completely yielded to the will of his parents, had they imposed it upon him, etc." Besides these witnesses, four others were questioned by the court, who testified that they had advised Titus' family not to enter into marriage easily.

[*Latin ed. p. 265*]

MARRIAGES. 265. They had given their only daughter to an unknown man, who had provided for them with voluntary military assistance. Therefore, having heard of these new events, the Theologian, Canonist, and Defender of the marriage were again heard in Rome, and the cause was again presented to the Sacred Congregation. WHAT THE

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THEOLOGIAN THOUGHT. — In a new written opinion, the Theologian, having considered the newly presented facts, changed his previous opinion, believing that it was now sufficiently clear that the error lay in the simple quality of the person. For it was not known to Titus and Gaia that Seius was a nobleman and the son of a patrician; indeed, the contrary was true, as they had received this information from their own wombs, although they were convinced that Seius was both wealthy and honorable. Furthermore, it appeared from the facts that Gaia was induced to enter into that marriage by the prospect of wealth, and also by a certain affection for that young man. Therefore, the error was only regarding the quality of the person. WHAT THE CANONIST THOUGHT. — The Canonist considered it unnecessary to add anything further; since, from the newly presented facts, what he had already stated in his previous opinion was confirmed. Moreover, the Defender of the marriage presented two opinions in favor of the validity of the marriage, and the new facts confirmed what he had already observed. Therefore, the doubt was again proposed: "Does it appear that there is a nullity in this marriage?" RESOLUTION. — The Sacred Congregation, after again discussing the case on December 29, 1862, decided to respond: Negatively. FROM THIS, WE GATHER: I. That he who alleges an error must prove it conclusively. II. In contracting marriage, when an error of person intervenes, nothing is valid between the contracting parties. III. This error of person occurs when the individual with whom the marriage is contracted is completely different from the person that the contracting party has in mind. IV. However, it is not an error of person if the individual is different from the person that is conceived in the mind, only in certain qualities.

[*Latin ed. p. 266*]

206. MARRIAGES. V. However, qualities can be preconceived in the mind and directly intended, which bring about a person entirely different from the one with whom the marriage is actually contracted. VI. An error concerning such qualities is rightly said to constitute an error regarding the person (i). VII. However, an error concerning other qualities does not invalidate the marriage, unless the quality is placed as a condition without which there can be no marriage, so that consent is given to the marriage only under the express condition of the desired quality. VIII. In the present case, however, there was no error regarding the person; for Caia did not conceive of another person in her spouse than that present person, with whom the transaction was carried out. IX. The qualities that Caia had preconceived as being present in her spouse did not bring about a person different from Seio; for Caia merely did not find those qualities that she believed would be found in that Seio person with whom she intended to enter into marriage. X. Nor were such preconceived qualities, namely, wealth and honor, placed as a condition in the Seio person: therefore, there

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was no basis for asserting the nullity of the marriage (2).

LEGATES. On August 27, 1864. PIUS. Sess. 23 c. i de Refor.

Compendium of the facts. Pia Marchionissa, being near death, made a will, in which she decreed: "I appoint my daughter Agnes as heir, with the obligation of celebrating the sacrifice each Sabbath at the altar dedicated to the Most Holy Virgin... and this sacrifice, if possible, will be celebrated by the Priest N., tutor of the boy..." Likewise, for my soul, I desire that the sacrifice be celebrated each Sabbath before the image of the Most Holy Virgin, which, if possible, will be celebrated by the Priest N., tutor of my nephew. (1)

(1) It seems that these qualities determine P. Illsuag, tract. G, dist. 9, n. 68, with these words: "An error regarding a quality is said to pertain to the person, if the quality is an individual determination of that very person, as if you wished to marry the eldest daughter, and you are presented with the second daughter. If, however, you marry this one, believing her to be the eldest daughter, then your intention is not directed towards her as the eldest daughter, and there was no error regarding the person." (2) See Appendix XI, and following pages.

[*Latin ed. p. 267*]

LEGATI PH. 267 To this disposition of the Marchioness, Agnes diligently fulfilled her inheritance; but, Agnes being deceased, her sons and heirs petitioned the Apostolic See, that it might be declared: I, whether the bequest of masses was truly obligatory. And, if affirmative, whether such obligation ceased with the death of Agnes. Asked for information and his opinion, the Ordinary revealed his mind in favor of the obligation, and the legatees maintained its perpetuity. For, concerning the first doubt, he considered that the Testatrix, in the same context, called the heir, and imposed the burden of the legacy upon that very heir. Therefore, the Institute considered the heir to be bound by the legacy, and that such a judgment could not be nullified by another subsequent statement: "I desire that it be celebrated." Indeed, by this other way of speaking, the Testatrix intended nothing other than that what she had established as a law, should also be obtained through prayer. She spoke, in effect, as a mother to her child, so that, with greater eagerness, through filial love, the legacy might be fulfilled. Concerning the second doubt, he considered that such a legacy was connected with the quality of the heir, for she did not command it to be done as a daughter, but as an heir, and therefore such a legacy should follow the inheritance, and not merely the person of Agnes. He also confirmed this from the indefinite sentence repeatedly emphasized on each Sabbath.

A SYNOPTIC DISCUSSION. POINTS OF REASONING IN FAVOR OF THE HEIRS REGARDING THE FIRST DOUBT.

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In favor of the heirs, with regard to the first doubt, it was observed that the words of the Testatrix should be given preference over her will, her desire, rather than the true law of obligation. For the subsequent words: "I desire that it be celebrated," appear to declare the prior words of obligation, so that the word "obligation" should be understood only improperly; and if it were to be understood properly, then that law of obligation should be corrected and removed by the subsequent statement. For nothing prevents the Testator from correcting a previous writing with a subsequent one. L. 17 ff. in fin. de adim. vel transfer, leg. Indeed, it is established in jurisprudence that the most recent will, the most recent condition, and the most recent writing, should be considered, especially in legacies. L. 6 §. 2 ff. cited, title L. 87 ff. de condit, et demonstr. L. 12 §. 3 ff. de Legat, et fideicom. Therefore, in this case, if the heir had not fulfilled the legacy, he would indeed have been lacking in the duty of piety, but he would not have contradicted the law of the testament.

[*Latin ed. p. 268*]

268. LEGATES OF PIUS. FAVOR TOWARD HEIRS REGARDING A DOUBTFUL MATTER. Furthermore, concerning another doubtful matter, it was observed that, in favor of the heirs, the words of the testament did not establish perpetuity. The obligation of the Masses did not appear to pertain to the inheritance itself, but rather was specifically assigned to Agnes. For the obligation imposed upon the heir operates under the heir's proper name and designation, so that the person burdened by the obligation does not escape it. Card. De Luca, *De Legatis*, Disputation 34. It was also added that it does not obstruct the matter that such an obligation was joined to Agnes with the designation of heir; for this only indicates that the Testatrix spoke of the heir whom she directly saw with her eyes, as is said in the document from Castellarne, dated August 28, 1723, §. Moreover, in Naples, regarding the pious legates of February 1850, §, it was deemed absurd (1). This is confirmed by the special circumstance in which the Testatrix designated a particular person who should celebrate the Masses, namely, the tutor of the child, the same Agnes's nephew. But besides these observations, by which it appeared that the Testatrix had only considered the presence of persons, another observation was made, according to which, the other indications of the perpetuity of the legate were lacking. Indeed, there was no provision for the substitution of a prior heir with regard to the satisfaction of the Masses; there was no specific designation of a fund for the fulfillment of the legate; there was no designation of a particular church or altar where the sacrifices should be performed, from which indices the perpetuity is usually inferred. Piton, *De Iure Patr.*, Controversy 34, n. 5. And in the interpretation of such legates, it was considered that the Holy See had often ruled in favor of a temporary duration. Indeed, in Rome, on November 18, 1719, a certain

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Testatrix bequeathed "to the Archiconfraternity of St. Jerome two plots of land, with the obligation that twenty Masses be celebrated in the said church, and one Mass for the dead with singing." After this obligation was fulfilled once, R. Fabrica of St. Peter argued that the legate had been intended to be perpetual, and the Holy See, in a case with a similar doubt: "Whether the obligation of the Masses prescribed in..."

(1) This is the practice that prevails in the Office of the Holy Congregation of the Council, as well as in the Secretariats of other Congregations, so that, in order to confirm a particular doctrine, paragraphs from other cases that are relevant to the matter are also cited, as is customary in other tribunals, and especially in the Holy Roman Rota. In this way, a special tradition of legal doctrine is preserved, which is most useful in particular cases to ensure that the judgments issued are in conformity with it.

[*Latin ed. p. 269*]

LEGAL OPINIONS. 269 The legate in question was either temporary, for a single occasion, or, rather, perpetual. In this case, the response was: affirmative to the first part of the question, and negative to the second. Similarly, in Camerino. The legatees, on June 12, 1721, the testator, having instituted his wife as heir, enjoined upon her: "that she should be obliged, and should remember, to celebrate annually the office on the feast of St. Peter in the aforementioned church and chapel, with the number of Masses that she will be able to have on that day of St. Peter." And when it was doubted whether the person of the wife alone would inherit the legate, the question was proposed: "Whether the legate of Peter Gentilis is perpetual?" and the answer was: negative. Again, in Montefalco, on December 16, 1724, the testator wished "that his hereinafter mentioned heirs... should be obliged and should have to celebrate annually one anniversary and annual Masses in the aforementioned church." And furthermore, he wished that if the aforementioned heirs should fail in the fulfillment of the legate, the fruits of the inheritance should be returned to the Brotherhood of Mercy for five years, after which they would again revert to the heirs. A distant heir doubted: "Whether the burden of the anniversary and the annual Masses is perpetual, or rather, temporary for the lifetime of the testamentary heirs?" And the response was in accordance with his wishes: negative to the first part, and affirmative to the second. Finally, in Naples, the testator had decreed in his will: "I wish and desire that Mr. Michael, together with two other heirs of the property, should celebrate annually for the souls of myself and my parents 200 selected annual Masses, and that I should not cease to pray to God for them and for my other children..." After the death of these heirs, their children and heirs petitioned the Sacred Congregation: "Whether the legate expires with the death of the former heirs, or rather, whether it is to be fulfilled perpetually by their successors in that case." And on May 18, 185 to, they received the answer: affirmative to the first

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part, and negative to the second (1).

WHAT OBSTACLES EXISTED FOR THE HEIRS REGARDING THE FIRST QUESTION. — On the contrary, regarding the first question, it was noted that the heirs' wishes were an obstacle (t). It is easy to observe that in these indicated dispositions, there were sufficient indications that the testators had before their eyes particular persons, and not the inheritance itself. From this observation, it clearly follows that the legates imposed upon persons should expire with the persons.

[*Latin ed. p. 270*]

270 DE LEGATIS PIIS. The very words of the Testatrix, stated openly, – with an obligation – demonstrate that the subsequent words express a desire, so that it can be understood that the Marchioness was concerned about this legate, and wished to impress it upon her in various ways, once and again. WHAT OBSTACLES EXISTED REGARDING THE DOUBT. It seemed possible to deduce from the words with which the Testatrix conferred the honor of heir upon Agnes, together with the burden of the legate – "I urge my daughter, the heir, with an obligation" – that the obligation was not temporary, but perpetual, so that the obligation appeared to be attached to the quality of heir. Furthermore, "the designation of heir," says Ulpian, "is understood not only with regard to the nearest heir, but also with regard to those further removed," for both the heir of the heir, and subsequently, are included in the designation of heir. And again, "By the designation of heir, all successors are to be understood, even if they are not expressly mentioned." Leg. 65 and 170 concerning the meaning of words, to which the authorities agree. And if doubt still remained as to whether the burden of the legate weighed more heavily upon the person, rather than upon the inheritance, it was noted that the matter concerned a pious cause, for which Tiraquell, in I. boves §, in this discourse on the meaning of limiting words, section 8, number 6, and Menoch, Praesum. 132, number 3, teach that, in cases of doubt, the legate should be presumed to be perpetual. For, as the Cardinals of Lucca teach in *de legat. disc.* 19, number 7, and the Rota in *decis.* 35, number 6, *cor.*, the broadest interpretation should be given to legates in favor of perpetuity, by reason of piety and divine worship, whenever strong conjectures to the contrary are lacking. This is especially true when it is a pious legate which consists of Masses to be celebrated on certain, specified days, without any limitation of time, both because the act is repeatable, and because an annual, or monthly, or weekly burden, without a limitation of time, is considered perpetual, as argued from I. Gaius, *ff. de ann. legat.* Lara, *De annivers.*, book i, chapter 3, number 9. Leontius, *De offic. Capell.*, question 5, section 1, number 9. Pasqualis, *De mcrif.*, N. L., question 105, number 2. This doctrine was confirmed by the following resolutions of the Sacred Congregation: In *Urbanien. Legati*, on June 14, 1704, in the *lib. Decret.*, 54, page 237, the Testator

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wished "that the heirs mentioned below should celebrate one Mass each week." Furthermore, she wished "that the aforementioned heirs should, in perpetuity, celebrate the feast of Saint Agnes in the said church each year."

[*Latin ed. p. 271*]

LEGATES OF PIETY. 271. Concerning those who are sent forth with at least twelve misses; if they do not accomplish this, the Rector of the Parish is obligated to ensure it is done, and afterwards, these individuals and their successors are to be held accountable. Regarding the first legate, which seemed to be an exception, the question was asked: "Is the obligation of a miss assigned for each week, as prescribed in the aforementioned legates, perpetual, or rather, does it expire upon the death of the instituted heirs in this case?" The response came out in favor of perpetuity: affirmative regarding the first part, negative regarding the second. Furthermore, in Cervia, July 30, 1785. The testator stipulated that the designated heir, upon inheriting the property, should pay annually to the Rector 50 scudi for the altar of the Blessed Virgin... also, that the designated universal heir, upon inheriting the usufruct, should have 400 misses of Requiem celebrated each year for the soul of the testator. Consequently, the question arose: "Does this pertain to perpetuity, or is it temporary, concerning the legates in question...?" and the answer was: affirmative regarding the first part, negative regarding the second. Later, in Aprutina, May 19, 1787, the testator instituted a priest, N., as heir, and obligated him "to celebrate, or to have celebrated, forty misses each year." Furthermore, having forbidden any alienation of the property, he ordered that if the aforementioned heir refused this disposition, the church of St. Francis should be substituted in the first place, "with the same burdens and conditions;" and in the second place, other substitutes. The following doubt was proposed: "Does the annual obligation of celebrating masses, imposed upon the first heir, pass on to his successors?" The response was: affirmative. Finally, in Nepeta, on December 16, 1797, the testator wished "that the feast of the Most Holy Rosary be celebrated each year by the designated heirs (fideicommissaries) and children, on the first Sunday of October, with greater solemnity than they were able, and that a Mass be celebrated on each first Sunday of every month, with candles purchased at their expense, giving to the priest who celebrates the Mass a suitable alms." The following question was then proposed: "Does the legate in question expire with the death of the prior heirs, or rather, is it perpetual, to be fulfilled by their successors in this case?" And the response was: negative regarding the first part, affirmative regarding the second.

[*Latin ed. p. 272*]

272. DE LEGATIS PIIS. Postquam haec exposita sunt, proposita sunt ad solvendum: "I. Num legatum pium sit necessarium, seu potius, mere facul-

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tativum in casu. II. Num praedictum legatum expiret cum persona haeredis (Agnes), seu potius perpetuo transiret ad eiusdem successores in casu."

RESOLUTIO DUBIORUM. Sacra Congregatio Concilii, post deliberationem die 27 Augusti 1864, censuit legatum esse obligatorium et perpetuum, respondendo: Ad I. Affirmative ad primam partem, negative ad secundam. Ad II. Negative ad primam partem, affirmative ad secundam.

COLLIGES:

I. In interpretatione talium legatorum, non minus attendi debere ad verba testantis, quam ad mentem testantis eiusdem, adiunctis considerationibus.

II. Maxime vero attendi debere, an testator gravare voluerit peculiares personas quas haeredes instituit, vel potius haereditatem ad quam assequendam personas nominavit.

III. In priori casu, legatum temporaneum censeri, et cum personis oneratis expirare; in altero vero casu, censeri perpetuum, et ipsam sequi haereditatem.

IV. His considerationibus, si anceps adhuc sit mens et locutio testantis, ita tamen ut graviora indicia militent pro onere personali, legatum censeri temporaneum; si veluti paria militent indicia pro utraque dubii parte, legatum censeri perpetuum (1), prout in praesenti casu contigisse videtur.

(1) Si eiusmodi normae pra oculis habeantur, disparet ea oppositio, quae prima fronte, ex allegatis superius resolutionibus, legenti videri forsan posset. Neque debet nimis exaggerari ea locutio, qua dicitur in dubio standum esse favore pii legati. Non enim in quocumque dubio haec dictio verificatur, sed in eo dubio, in quo iudicis mens, indiciis hinc inde spectatis, determinari rationabiliter non potest, potius ad unam, quam ad alteram dubii partem: in quo casu, duo extrinseca insuper in conflictu veniunt, nempe haeredis libertas, et favor piae causae, spectata. Auctorum dicta sententia, favor piae causae vincit haeredis libertatem.

[*Latin ed. p. 273*]

273. OF ABSOLUTION FROM CENSURES AND A DISPENSATION. November 20, 1824. Summary of the case. A certain Priest N, having presented a petition to the Sacred Congregation of Councils, requested absolution from censures, a dispensation from irregularity, and rehabilitation, because he had voluntarily joined the soldiers who were setting out to capture or suppress certain notorious bandits. Furthermore, two of those soldiers had been killed. Upon being questioned, the Bishop related the following to the Sacred Congregation: The petitioner had been given the name of a member of the Carbonari sect; he had subsequently been accused by the civil government of having committed a certain homicide with others, and to obtain his release without a regular trial, the aforementioned petitioner

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offered himself to the same government, threatening to use arms against certain seditious individuals, commonly known as bandits. In fact, together with other soldiers, he marched against these aforementioned individuals, armed with a ballista, and a conflict ensued. Two of the seditious individuals were killed, and two others were wounded. However, the petitioner assured the Bishop that he had not struck anyone in that conflict, but had merely followed the directions given by the person operating the ballista. "Today," the Bishop continued, "it is certain that the petitioner had no part in the homicide of which he was accused, nor did he strike those seditious individuals in the aforementioned conflict." Nevertheless, it was deemed advisable to consult with the Holy See regarding the absolution from the censures into which he had fallen, because, with regard to the Carbonari sect, he had previously undergone punishment through suspension, spiritual exercises, and other acts of mortification, which he had observed for a long time in a religious community. Therefore, it is considered that the petitioner is capable of celebrating the Sacred Liturgy, since he appears to have returned to a life of piety.

MATTERS TO BE OBSERVED EX OFFICIO. It was noted that, ex officio, the petitioner, by associating himself with the Carbonari sect, had incurred a sentence of excommunication, reserved to the Holy Father. Although it is not known whether, after the solemn condemnation of the Carbonari, which took place on September 1st of the year 1821 (1), the Pope (1) See Appendix X, page 308. Acts, vol. I, fol. F. 18.

[*Latin ed. p. 274*]

274. If the Absolution from censures and dispensations is granted, and the individual subsequently adopts the name of such a sect, or perseveres in it, he nevertheless appeared to be subject to excommunication, according to the Constitutions of Clement XII and Benedict XIV, by which the Societies of the Free Masons, or "Francs Maçons," were condemned and struck down with the sword of anathema. Indeed, the Supreme Pontiff (Pius VII) sufficiently indicated the condemnation of the Carbonari sect in the aforementioned decree, stating that he would impose severe penalties upon the Carbonari society, especially since the Carbonari widely contend that they are not included in the aforementioned Constitutions of Clement XII and Benedict XIV, nor are they subject to the sentences and penalties contained therein. Furthermore, the Orator became irregular on three grounds. For if the Orator falls into excommunication because he was enrolled among the Carbonari, he certainly becomes irregular by violating the censure regarding the application of oneself to divine matters, chapter penultimate and last, of "De Clericis excom.," provided that it is not credible that a lost person abstained from celebrating the Sacrifice immediately after being enrolled among the sectarians; especially so that fellow citizens might not be led to suspect a crime of this nature. Then, when it began to be pro-

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claimed that the Orator was among the Carbonari, and furthermore, that he had been assigned a murder, he became irregular, if not by legal infamy, certainly by infamy of fact. For to incur this irregularity, it is sufficient that there is a widespread opinion of such a crime, by which the reputation of the delinquent is damaged among honest and upright men; although the infamy is neither expressly imposed by the law itself, nor by a sentence of a judge, as argued in I. Neq. 2 of the Code "De dignitat.," Ferraris, "Biblioth." under the word "Infamia," n. 3, Beiffen, "lib. 5 Decretal," title 27, § 3, n. 53. Those, however, who did not hesitate to be counted among the Carbonari sect, and who are accused of a murder before a judge, cannot be doubted to be infamous. Finally, it was observed that, since the Orator, by his own choice, was enrolled among the soldiers, and armed for war against wicked men, and repeatedly fired a ballista of fire upon them, he became irregular due to a lack of clemency, even though he may be morally certain that he did not kill anyone, "as if to mutilate." For even though secular military service alone... (1) See Appendix X, pages 301 and 304.

[*Latin ed. p. 275*]

ABSOLUTIONS FROM CENSURES AND DISPENSATIONS. 275. No irregularity is incurred, as declared by the Holy Congregation of the Council in Laodicen. on September 30, 1648, in MonaceL, volume 4, supplement, to volume 2, number 7. Nevertheless, he who has taken the name of a soldier, and has been among armed troops, is not only guilty of a grave sin, since the Holy Canons forbid clerics from fighting with their own hands; but he is also to be considered irregular, even if he himself has not killed anyone, but only other soldiers, according to the opinion received by the Holy Congregation of the Council in Ipren, Irregularitatis, January 13, 1703, in Brigatien, Habilitationis, March 30, 1805, in Forolivien, Dispensationis, February 17, 1816, and in Matelicen, August 3 of the same year. From this it is clear (it was concluded) how far this priest has strayed from that integrity of life and innocence which is fitting for clerics, as natural reason itself teaches, and which the same canons seek to preserve, and as the Apostle commands. But a punishment proportionate to the crimes is due. However, the acts of mortification and spiritual exercises performed by the petitioner do not seem sufficient, especially in order to remove the scandal caused by him by renouncing the sect of the carbonari, whose wickedness still causes the world to groan.

RESPONSE. — The Holy Congregation of the Council, after considering the prayers, decided on June 14, 1823: "Regarding the grace concerning absolution from censures; regarding dispensation and rehabilitation, he must wait, and give greater signs of penance and constant amendment."

FURTHER SUBMISSION OF THE SAME PETITION. The petitioner, after such a response, returned and again implored that he might be granted the grace of dispensation and rehabilitation. The Bishop, again consulted,

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revealed his opinion as follows: "I am certain," said the Bishop, "that the petitioner is living in great distress, due to so many misfortunes befalling him, due to the sudden death of his father, due to the poverty that has come upon him. Meanwhile, he must support his family, consisting of nine constant persons, and he himself does not cease from striving according to right reason, giving signs of true amendment; I believe that there is no danger of scandal if he is again made capable of celebrating Mass in his town, where everyone knows him, and his needs and his family, and his present way of life is free from faults."

[*Latin ed. p. 276*]

276. ON ABSOLUTION FROM CENSURES AND DISPENSATIONS. After such testimony from the Bishop, it was observed, as a matter of course, that the action was not regarding the promotion of a candidate, but rather concerning one who had already been promoted to the Orders (1), in which case, after the scandal had been removed and after the completion of penance, a dispensation or rehabilitation seemed to be warranted. This was in accordance with the Council of Trent, Session 14, Chapter 7, concerning Reform, and in the *Irregularitatis* of Calaritana, January 19, 1793. Furthermore, the poverty of the candidate, who, along with his family, was burdened by very serious hardships indicated by the Bishop, led the Most Holy Congregation of the Council to frequently consider, out of mercy, whether a dispensation should be granted, as in the *Irregularitatis* of Auximana, August 27, 1789.

RESPONSE.— On November 20, 1824, the Most Holy Congregation of the Council decided to respond: after the completion of spiritual exercises in the place and for the time determined by the Bishop, for the sake of mercy, and to the Secretary of His Holiness (2).

FROM WHICH ONE MAY GATHER:

I. That a priest, deeply afflicted by condemned sects, becomes irregular by the very act of performing sacred rites, thereby incurring a violation of the censure.

II. That a priest can become irregular through infamy of an action, even if he is not declared infamous either by the law itself or by a judicial sentence.

III. That a priest can likewise become irregular through a lack of gentleness, namely, one who has gone to fight with his own hand among soldiers, even though he himself, in the conflict of battle, has not killed or maimed anyone.

IV. That no one, however, becomes irregular through a simple conscription into military service, even though this is prohibited for priests by the sacred Canons.

(1) See page 91, § IV.

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(2) "Secretarium cum SSmo" is equivalent to "alteri" (the other). This clause, addressed to the Secretary of His Holiness, is equivalent to the preceding clause. See page 50, note.

[*Latin ed. p. 277*]

277. ON ABSOLUTION FROM CENSURES AND DISPENSATION. May 8, 1824. Summary of petitions. Titius, having received the tonsure and the four minor orders from his own Bishop, came to Rome, where, having obtained an Apostolic Indult, he was ordained as a subdeacon, and then as a deacon. Afterward, returning to his homeland, he repeatedly requested his own Bishop to promote him to the order of the priesthood. When questioned by the same Bishop as to whether he was addicted to the sect of the Carbonari, he openly denied it, and, when required to swear an oath, he did not hesitate to swear. Therefore, he was ordained to the priesthood on April 7, 1821, and the following day celebrated his first Mass, and afterward celebrated ten other Masses. However, when the Bishop became certain that the aforementioned priest was bound to the sect of the Carbonari, he immediately suspended him from divine functions, and warned him to seek a dispensation from the irregularity contracted from the Apostolic See; and finally, he ordered him to spend a long time in some religious house, engaged in works of penance. Titius presented himself to the monastery of A., where he remained for 19 days; but, because of the high daily expenses, he left and lived in his own home, until, in July of 1822, he devoted himself to spiritual exercises for ten days, and repeated this for the same period in August. In the meantime, from March 30, 1822, he presented petitions to the Sacred Congregation of the Council for absolution from the irregularity; but, after hearing the information from the Bishop, on January 8, 1823, he was dismissed with the response read (1). When he again petitioned in March of the same year, a response was given according to custom: that he should return after a year, recommended by the Bishop, and in the meantime, he should give further signs of penance and constant amendment. In July of the following year, before the year was completed, he presented a third petition, and a response was given in the decrees. However, Titius, not losing hope, on August 13 of the same year, 1823, presented a fourth petition, along with a commendatory letter, in which the Bishop stated: that the petitioner had given and was constantly giving evident signs of repentance, and from his manner of life (1) See page 144 in the note.

[*Latin ed. p. 278*]

278. The ABSOLUTION from censures and dispensation, on account of his, sufficiently demonstrated his constant amendment. Therefore, it seemed to the Bishop that the Orator would obtain the grace he implored. REGARDING MATTERS TO BE OBSERVED EX OFFICIO. — It was noted, ex officio, that the Orator had, long before the Constitution of

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Pius VII, given the name "carbonariorum sectae" (sect of the carbonari); and that he, subsequently, as a penitent and obedient to his own Bishop, had issued a retraction, before the same Constitution was promulgated, which was given on the Ides of September, 1821. Then, it was debated among the Theologians whether the general condemnation of secret societies promulgated by Benedict XIV included the sect of the carbonari. Furthermore, it was observed that a full year, and more, had passed from the day on which the Orator's letter had been read (for these petitions were presented to the S. Congregation on May 8, 1824), until the day he was recommended by the Bishop to request absolution. Therefore, it seemed favorable to the Orator, although it did not appear when the Orator joined the carbonari, or before what order of things this occurred, and therefore, it could not be determined whether he had been subject to one, or several, irregularities. — The Sacred Congregation of the Council decided on May 8, 1824: to wait another year, and in the meantime, to serve some church, to give greater signs of penance and constant amendment, and after a year, to return, recommended by the Bishop. FROM THE TWO POINTS EXPLAINED ABOVE, YOU CAN GATHER: I. That priests who have been most wickedly involved in such sects are not absolved by the Holy See, unless they have given long signs of penance and repentance. II. That the Congregation of the Holy Council held that the Constitutions of Clement XII and Benedict XIV, although they explicitly named only the sect of the "liberi muratori, seu francs-maçons" (free masons), also included other sects of the same kind. For it was not the name that was condemned, but the nature of the sects. III. That they are greatly mistaken who believe that the preceding and subsequent Constitutions of the Holy Pontiffs, condemning sects with an anathema, do not have force in those regions, where, by the civil authority, the aforementioned sects are tolerated. For injustice, whether pursued with favor, or even brought to triumph, does not lose its nature.

[*Latin ed. p. 279*]

279 FROM THE HOLY CONGREGATION OF BISHOPS AND REGULAR CANONS CONCERNING THE VALIDATION OF CONTRACTS OR AGREEMENTS. Summary of the case. The possessor of a benefice had requested an apostolic dispensation from the Holy Congregation of Bishops and Regular Canons, so that he might grant an estate, which he stated to be worth five rubles, in perpetuity to Titus, for a period of ninety-nine years, with a stipulated annual rent of nine scutes. The Diocesan Bishop, having been ordered to investigate the truth of the claims and to express his opinion according to the dictates of the Holy Order, after examining the faith that had been entrusted to him, and after consulting with a suitable and expert surveyor (whom they call an "expert"), determined that the facts presented by the petitioner were true, and that the perpetual lease

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would be to the evident benefit of the benefice. Therefore, on November 19th of the year 1829, the Holy Congregation granted the request, issuing a decree in these words: "We benignly grant to the Bishop the authority to, if the facts stated are true, and if it is evident that this will be to the benefit of the benefice, grant the requested permission, according to his own judgment and conscience." The usual clauses were added, but no condition was included requiring the presentation of a Vigesima and Sexta (a tax assessment), which was not customary at that time; for the general decrees of the Holy Congregation on this matter had not yet been promulgated and enacted (1). On December 22nd of the same year, the Pro-Vicar General and the Cathedral Archpriest ordered the execution of the aforementioned decree, using the apostolic faculties (as they themselves stated) which had been granted to them. However, the Bishop had not granted them any special delegation for this purpose, nor was it established that they had been delegated in any way. It happened that at that time the Bishop was suffering from a very serious illness, and as a result of this, he exchanged this life for eternal life a few days later, at the end of the same month of December. Shortly afterward, Titus obtained a legally valid instrument of perpetual lease through the acts of a Notary (1; See Appendix IX, page 251).

[*Latin ed. p. 280*]

280 CONCERNING PERPETUAL LEASES OR AGREEMENTS. He endeavored to effect this, and did not delay in transferring the beneficial possession of the estate. After these things, he improved the estate itself, bringing it to a better condition for cultivation, from which a more abundant annual income began to be received. Furthermore, since the estate was subject to the servitude of pastures for the benefit of the inhabitants of the local municipality, a servitude which could only be enforced for three years of cultivation, Titus, taking advantage of the benefit of a publicly promulgated edict of the law, by paying the prescribed sum of money, freed the estate from all burdens of servitude; thus, the owner was no longer prohibited from cultivating and sowing the land at his own discretion. In the year 1859, Titus died, leaving behind a minor daughter as his heir, and appointing his own mother as guardian to her, although this woman subsequently, as indeed happened, entered the religious life and took her final vows. In this situation, a doubt arose as to whether the perpetual lease would be valid and effective, because the Pro-Vicar General and the Archpriest, who appeared not to have been endowed with the authority of the rescript of November 19, 1829, issued specifically by the Bishop, to whom the execution had been entrusted by the Holy Congregation. Therefore, with the mother acting as guardian of her daughter, new petitions were presented to the Sacred Congregation of the Holy Office and the Regular Canons, in which it was requested that all that might have occurred in the execution

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of the aforementioned rescript be remedied by the apostolic benevolence. Upon being consulted, the Bishop, in order to gather the elements with which to prepare his response to the Sacred Congregation, discovered that the beneficial estate in question was not subject to the amount mentioned in the petitions of 1829, namely, five hundred rubles, but rather extended to ten hundred rubles, in addition to the three. Nevertheless, it was deemed that it was possible to act benevolently towards the minor, provided that the annual canon of nine scudi be appropriately increased to conform to the norms of equity. Therefore, the Sacred Order instructed the Bishop to institute a friendly reconciliation. The administrators of the benefice (since the benefice was temporarily vacant, the fruits of the benefice having been granted for ten years to a religious institute with the permission of the Holy See) maintained that, since, according to the testimony of a surveyor, one hundred scudi could be received from the entire estate subject to the perpetual lease, the annual canon should amount to fifty scudi: but the guardian of this estate...

[*Latin ed. p. 281*]

ON PERPETUAL CONTRACTS OR AGREEMENTS. 28 I "oris testified that the fundi of Fondi was not as beneficial as claimed, and therefore offered an increase in the annual payment to thirty scudi. However, since the parties did not agree, the matter was brought before the Sacred Congregation for judgment. A summary of the arguments. WHAT COULD BE OBJECTED TO THE PETITIONS. — There were two objections that were primarily raised; namely, the intrinsic nullity of a contract concerning a beneficial fund due to the deception and fraud in the petitions, and the extrinsic nullity of the executive decree due to the lack of authority of the executors. Let us first discuss the first objection, in which there was no need for extensive investigation, for the facts themselves spoke for themselves, as it was shown that the petitions for the year 1829 were false. Indeed, the beneficial fund was said to produce five hundred rubles; but, upon closer examination, it was clearly established that the fund itself amounted to thirteen hundred rubles. And it could not be denied that this matter had proceeded with good faith and without contradiction. For in canon law, it is established that deception and fraud have a place, even if such a defect occurs unknowingly: it is sufficient that the petitions are recognized as not being true in any way. If the Sacred Congregation, in the manner in which the matter truly stood, had recognized the situation, it would have undoubtedly denied the requested grace, especially given the small amount of the annual payment specified: which, according to the common law of the Holy See and the teaching of scholars, is sufficient to establish the presence of deception and fraud, and therefore the grace, as being so fundamentally tainted by a defect, should be considered as if it had no foundation at all. Although, if one were to concede, through extreme generosity,

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that this difficulty could be overlooked, the second objection concerned the nullity of the execution of the decree, which could not be overcome. For it is established that such decrees granting graces, customarily issued by the Sacred Congregations of the Holy City, only attain perfection when they have been duly demanded for execution by those to whose judgment and conscience they are remitted. The intervention that is not only permitted to the executor, but is even commanded, would be detrimental to prudent judgment and conscience, and would be nugatory. Hence, it is the case that the Doctors, especially those who...

[*Latin ed. p. 282*]

282 CONCERNING THE VALIDATION OF CONTRACTS OR AGREEMENTS. Practical matters demand that, with authority and judgment, matters of this kind be considered as conditional agreements, which, indeed, depend on the condition of their execution (1). Given this, it must be stated that the agreement in the case under consideration is plainly imperfect, if its execution is found to be null: for this condition, being a substantial one, has not been fulfilled, and what was defective from the beginning cannot be made valid over time. The ineffectiveness of the executive decree is made clear by the light of day. Although the Pro-Vicar General carried out the execution, and the canonical laws of ordinary jurisdiction generally allow him to do so by virtue of his office, nevertheless, this authority has its certain limits, which he is not permitted to exceed (2). Therefore, in this case, it is necessary that the General Vicar not act at all, unless the Bishop confers upon him a special faculty, either generally for those who are assigned to this ministry, or specifically in particular cases, as often as they may arise. Moreover, the fact that the execution of the Apostolic Brief, entrusted to the Bishop by name, cannot be attributed to the powers that belong to the ordinary General Vicar, itself demonstrates that the alienation of Church property is not permitted to the Bishop, since it is reserved to the Supreme Pontiff. What is permissible to the Bishop is only that he not prevent the General Vicar from delegating this authority.

(1) Monacellius, who is deeply knowledgeable in Canon Law, having served as an official of the Sacred Congregation for fourteen years, writes in his work *Formul. Leg. tit. -i4 form. 4* as follows: ”The Apostolic Brief concerning the alienation of the goods of churches and places of pious institutions, whether it is issued by the Dataria, or by the Congregations of the Council and of Bishops and Regular Canons, regularly contains clauses which make the grant conditional, and which require the executor to observe a precise form, as the Rota has said.” Similarly, Rigautius writes in *Reg. 52 n. 76, c. 73, Rosa Exec. Lit Apost. cap. 13, n. 67*. To these may be added the authority of the Rota, both in ancient and recent decisions.

(2) It is certain and undeniable that ”by the general constitution of the Vicar, the faculty which belongs to the Bishop by special law is not trans-

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ferred to him," as Fagnanus states in *ad cap. Quoniam De offic. Deleg. n. 10*; for, as he himself adds, "in delegated jurisdiction, there is no extension from person to person." Therefore, in the decrees of the Council of Trent, whenever something is granted to the Bishop by delegated jurisdiction, it is understood that this is not permitted to the General Vicar, unless a special authorization from the Bishop is added. See Leuren, *De Vic. Ep. Qu. Illi et Qu. 194*, Pirring, *De offic. vic. lib. i, t. 28, n. 91*, and others.

[*Latin ed. p. 283*]

ON THE VALIDITY DERIVED FROM AGREEMENT OR CONCORD. 2S3 As stated in chapter [referring to a previous chapter concerning the delegation of authority], "Since a delegate from the prince can further delegate." Furthermore, no mention was made in the executive decree of the special authority granted by the Bishop, who was still alive, as indicated above. Moreover, the opposing party failed to demonstrate, with legitimate proofs, that the Bishop's mandate was in any way lacking; rather, it was incumbent upon them to solidly prove this, if they wished for the validity of that act to stand (i). Therefore, since the rescript of 1829 was flawed in every respect, the requested validation should either have been entirely denied, so that grace would not be turned to the detriment of a third party, that is, the beneficiary, or at least it should have been referred to a more equitable solution according to canon law. For it was not permissible for the Oratrix [the woman bringing the case] to oppose the improvements made to the land and the benefit of free tenure, since Titus had received, for over thirty years, the natural benefit of the land in the amount of thirteen rubles, when he should have only received a benefit of five rubles. Consequently, it followed that the improvements made to the land should be considered sufficiently compensated for by the fruits of the land itself, and even more so.

WHAT WAS THE RESPONSE TO THESE EXCEPTIONS? – The Oratrix stated that in the petitions presented to the Sacred Congregation in 1829, she had taken the standard from the Ecclesiastical Curia's assessment, in which the amount of five rubles was recorded for the beneficial land. The surveyor appointed by the Bishop also conformed to this, as did the Bishop himself in his submissions to the Sacred Congregation. However, the error, by which thirteen rubles were recorded when only five were actually spent, certainly had its origin in the fact that eight rubles, which remained, were located in the soil, in the mountains, in stones, in sand, and were therefore hardly suitable for any cultivation, so that if some return was subsequently received, it was due to the industry of the tenant. (I) *A statement to the effect that "Presumption stands" for the nullity of an act, unless it is proven, and the one who asserts it is obligated to prove it, as Monacel, Form. Leg. Tit. 1 form. 1 n. 32 states. "The presumption stands" for the nullity of an act, unless it is proven, and the one who asserts it is obligated to prove it,

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[*Latin ed. p. 284*]

284 CONCERNING THE REMEDY OF CONTRACTS OR AGREEMENTS. A tax would have to be imposed, and therefore, if only the quantity were considered, a considerable error would seem to be present; but if the quality had been considered, it would easily appear that the error lay in accidental circumstances: which, according to the opinion of the Interpreters of Canon Law, excludes all fraud and deceit. Reiff., Lib. 1, Dec. tit. 3, n. 189. As for the nullity of the rescript due to lack of authority, the Petitioner maintained that the Bishop himself, while still enjoying sound health, had instituted the customary inquiry into the truth of the prayers, and, having learned the facts, had submitted them to the Sacred Congregation, with evident benefit to be derived. Indeed, the Bishop had even come to recommend the contract and the stipulation itself. Given this, what he thought, according to his own judgment and conscience, was already sufficiently and abundantly clear: therefore, he should be considered to have acted in the execution of the rescript not as a mixed executor, but as *merum*, that is, solely, and therefore the value of the grace granted by the rescript should be counted, and not at all by the executive decree. However, whatever the case may be, it cannot be presumed that the General Vicar had not executed the rescript according to the Bishop's mandate; especially since the Bishop could have given the mandate even by a simple indication. Finally, the lapse of more than thirty years from the rescript of the year 1829 to the prayers offered by the Petitioner, should be considered to have already purged any defect

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according to the principles of law. Nevertheless, the Petitioner was not averse to a fair and reasonable transaction, in which she denied that the beneficial income from the property reached one hundred scudi; on the contrary, she demonstrated that it was much lower, based on the lease agreements of a time not at all suspect. Therefore, she claimed, she offered a condition that was certainly most advantageous, especially if account were taken of the possibility of better cultivation of the land, and of the first liberation from the servitude of grazing, from which a more abundant collection of fruits had previously been, without loss, prevented. Doubt. "And how should a requested remedy be granted in this case?"

RESOLUTION OF THE DOUBT.—The Sacred Congregation, in a decree and regulation of February 26, 1864, responded: "Affirmatively, for the remedy, but with the canon limited to 30 scudi from that day."

[*Latin ed. p. 285*]

CONCERNING THE VALIDATION OF CONTRACTS OR AGREEMENTS. 285 At the beginning of the current year, improvements, including emancipation, shall yield to the benefit of the agreement, and the other conditions established in the original document shall be maintained, provided that the agreement is made with the Most Holy See. From the aforementioned documents, we gather the following: I. An Apostolic approval obtained through deceit or fraud does not suffice for the alienation of Church property. II. Deceit and fraud are to be considered whenever falsehood is presented, or the truth is concealed. III. This also occurs if the action proceeds from ignorance, but with good faith, when the defect pertains to essential matters (1). IV. The execution of the aforementioned document, entrusted to the judgment and conscience of the Bishop, shall ensure that the agreement is considered valid only if its execution is carried out. V. The Vicar General cannot proceed with such an execution unless a special authorization is granted to him by the delegated Bishop. VI. In cases where the Bishop proceeds by virtue of a delegated authority, the Vicar General cannot proceed without a special delegation from the same Bishop.

DISTRIBUTIONS. March 1, 1861. Summary of the case. In the diocese of A, there exists a parish church, in which the Archpriest serves as the parish priest, assisted by seven other priests who hold benefices. The duty incumbent upon them is to celebrate the solemnities occurring within the year, both at Vespers and Mass, with singing. Furthermore, they celebrate the fixed anniversaries that are to be observed according to the dispositions of the benefactors, and they receive the distributions and emoluments pertaining to these, as well as those related to the association for the burial of the dead.

(1) The most celebrated legal provision of Innocent III, concerning the deceit and fraud in the execution of documents, is found in chapter 20 of

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the Decretals.

[*Latin ed. p. 286*]

286 DISTRIBUTIONS. These are the allowances, and other sacred functions, which are said to be due. The said allowances, although the Archpriest, entrusted with the care of souls, willingly granted these distributions, if, during the customary annual celebrations, he was absent and unable to perform the functions: nevertheless, on a certain day, they denied him the right to receive other distributions, and emoluments, due to fixed anniversaries and additional functions in which the care of souls was not involved. The Archpriest appealed to the Bishop, whose General Vicar issued a decree in favor of the Archpriest, considering, above all, the custom, and thus, the Archpriest was to be restored to those emoluments which had been denied to him. Not agreeing with this decree, the holders of the prebends appealed to the Sacred Congregation of Rites and Regulations, in which, after hearing the information from the Bishop, the matter was resolved by a response to a question which is placed at the end.

A synoptic discussion. Both sides argued based on custom. The Archpriest argued that his predecessors, even when absent due to the care of souls, had received these distributions which were connected with fixed anniversaries. On the other hand, the holders of the prebends sought to show that this custom, if it existed, only applied to urgent cases of the care of souls, in which the presence of the Archpriest was absolutely required. However, this custom, in fact, or in favor of one side or the other, did not seem fully established and determined.

THINGS WHICH WERE OBSERVED BY OFFICE. — It was stated that the decree of the Council of Trent, chapter 3, session 22, concerning Reforms, was to be considered, in which it is written: "If to any of the aforementioned offices in cathedral or collegiate churches, by law or custom, jurisdiction, administration, or office does not pertain, but the care of souls is present outside the city or diocese, and he who holds the office wishes to be present in that church, then for the time that he is present and ministers, he shall be considered as present, in cathedral and collegiate churches." Furthermore, the Resolutions of the Sacred Congregation were cited, which are reported by Benedict in the *Institutiones*, 107, which concerned daily distributions.

[*Latin ed. p. 287*]

DISTRIBUTIONS. 287, namely in Milan. February 3, 1609 – The Holy Congregation decided that a priest who holds the office of spiritual care and hears confessions, or performs other duties pertaining to that care, during the times when divine services are celebrated, should receive daily distributions, even if he is not present at the divine services. Furthermore, on September 19, 1643, the same was affirmed, if at that time he is actually

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engaged in exercising said care and administering the sacraments. It was also observed that the same applied in the City, in chapters where one of the canons is a vicarious curate, who, although not present in the choir, nevertheless receives daily distributions by reason of his parochial office, as is recorded in Augustana, Distributions, December 14, 1844. Therefore, it was necessary to judge whether this right should be applied in the parish church in question, which is neither a cathedral nor a collegiate church. Regarding extraordinary distributions, or those that are occasional and uncertain, which are commonly called by that name in the present context, it was observed that the Holy Congregation had often considered the chapter statutes and particular customs, as in Anagnina, Services of the Choir, Distributions, November 20, 1819, regarding question XI; in Aquilana, Indulgences, June 26, 1745; and in Spoletana and Reatina, April 3, 1841. If, in the present case, a less firm and established custom were apparent, then the entire question would have to be judged according to the established legal procedures. According to the law as it obtains in the Holy Congregation, the aforementioned extraordinary distributions are distinguished into those that are granted on fixed days of the year for fixed functions, and those that are accidental and uncertain, and which arise, for example, due to funerals, Masses with singing, novenas, etc., which depend on the free will of the faithful. Regarding the first of these distributions, it was stated that they are received by the one who, although not present, is considered to be present by privilege, in the choir, provided that the will of the testators is not contravened, as the Holy Congregation defined in Lucana, Exemptions and Emoluments, January 30, 1858. In that document, the following doubt IV is recorded: "Whether (he) should receive a portion of the emoluments derived from fixed anniversaries in this case?" To which the answer was: affirmatively, provided that the will of the legatees is not contravened (1). And more relevant to the matter at hand, in Asculana, on (1) Tide, page 203, §. Indeed.

[*Latin ed. p. 288*]

288. CONCERNING DISTRIBUTIONS. November 20, 1830, regarding question IV. "Whether canons who are absent from choral service can receive distributions and benefits, for the exercise of the care of souls, in the case of [a specific situation]." The Sacred Congregation of Councils responded affirmatively with regard to all distributions and benefits, except those which, by the will of testators, are due only to those actually present. Regarding adventitious distributions, it was stated that the Congregation of Councils has customarily denied them to those who are not actually present. To confirm this, the Resolution in *Lucana*, concerning Exemptions and Benefits, at questions III, V, and VI, is cited, which will be seen below.

Question: "Whether, and in what manner, and what distributions are

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due to the Archpriest Parochial, exercising the offices of the parish, so that there may be a place for the restitution even of those benefits which were denied to him in the case."

RESOLUTION OF THE QUESTION. – The Sacred Congregation of Bishops and Regular Canons, having reviewed the matter, on March 1, 1861, decided to respond as follows: Regarding distributions and benefits derived from fixed anniversaries, affirmatively, with the understanding that the Archpriest is present; regarding the rest, reference is made to the Resolutions of questions III, V, and VI in *Lucana*; and, according to the norms given, there is a place for restitution. The questions in *Lucana*, and their respective resolutions, are as follows:

III. "Whether a canon, even if absent, is due a portion of the benefits derived from the association of burials, and from the respective funerals in the case."

V. "Whether a portion of the benefits is due from uncertain and extraordinary anniversaries in the case."

VI. "Whether a portion of the benefits is due from sung Masses offered as votive offerings, which, on the occasion of feasts, are celebrated by the chapter in the churches of the city and territory in the case."

The Sacred Congregation of Councils, on January 30, 1858, responded to question III with a negative answer in all respects. To questions V and VI, it responded negatively.

(1) (i) Perhaps you are wondering why the Sacred Congregation stated negatively in question III in all respects, while in the other two questions it says only negatively. The reason is that in the third question, more is included, while in the other two, only one thing is asked.

[*Latin ed. p. 289*]

DISTRIBUTIONS. From these, we gather: I. Canon laws, which are established for cathedral chapters, or collegiate bodies, should easily apply to those who, living collegially and like canons, are obligated to perform certain choral duties. For where the same legal principle prevails, the same legal arrangement should exist. II. Collegiate members: a prebend with an attached duty of caring for souls, present in the choir, should be considered as such, bearing the burden of that responsibility, while engaged in parochial duties; therefore, all distributions are due to him daily. III. Indeed, even extraordinary distributions are due to him, "which are distributed for fixed anniversaries, unless the will of the benefactor, or a statute, or a certain custom, prevents it" (1). IV. However, he cannot receive those emoluments which are distributed to those who serve, due to ecclesiastical functions. (i) This rule must be kept in mind in the case where someone is absent from the choir for a legitimate reason, such that, either by law, or by an exceptionless dispensation, he is considered

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present in the choir. For example, in Savona, on December 18, 1745, in response to a question: "Can Canon N. during his infirmity participate in all distributions, both ordinary and extraordinary, and in any other emoluments and benefits, as do the other canons interested in the case?" the answer was: affirmatively, except for those which, either by the will of the testator, or by the statute and custom of the church, are due only to those actually serving. Also, in L'Aquila, on June 26, 1745, an indulgence was granted to Canon N. to be absent from the choir due to infirmity. When the question was raised regarding the emoluments he should receive; in response to the question: "By which emoluments should he enjoy?" the Sacred Congregation of Rites, in its Acts, volume I, section K, decided: "He should receive all emoluments, except those which, either by the dispositions of the testator, or by the statute and custom of the church, are due only to those actually serving." Furthermore, in Rieti, on April 3, 1841, an indulgence of jubilation was granted to Canon N., with the usual clauses, namely: that although he may not serve in the future, he may nevertheless enjoy all the fruits and daily distributions of his canonry, as if he were personally present in the choir. There was no custom, nor statute, which limited the reception of distributions; for that canon was the first in that church to enjoy the indulgence of jubilation. It was asked: "Should Canon N. participate in the 'punctaturas,' or 'fallentias' [penalties] of other canons, if he is not present in the choir in that case?" The Sacred Congregation of Rites responded: affirmatively, unless there is an obstacle, either from the statutes, or from custom.

[*Latin ed. p. 290*]

FROM THE SACRED CONGREGATION FOR THE PROPAGATION OF THE FAITH. DECREE OF THE HOLY ROMAN CHURCH INQUISITION CONCERNING SECRET SOCIETIES. To the Archbishops of Baltimore, Cincinnati, and New York; and to the Bishops of Albano Laziale, Boston, Brooklyn, Buffalo, Burlington, Hartford, Newark, and Portland.

"More things have been brought before the Holy See concerning a Society called the Brotherhood of Fenians, or Fenians, and this has been submitted to the Supreme Congregation of the Universal Inquisition, so that it might be determined what should be thought concerning them. Furthermore, the Most Holy Pope Pius IX, having heard the opinion of the Inquisitors, has ordered that the following Decree, dated February 4, 1846, be brought to your attention: All secret societies, of which mention is made in Pontifical Constitutions, are to be understood as those which, whether they demand it or not from their adherents, make a vow to keep secrets against the Church or against the government (1). Moreover, His Holiness wished that you be informed that, should any difficulties arise in the application of the aforementioned Decree, recourse should be made to the Holy See,

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with all the circumstances of the matter clearly explained (2)."

"Because, recently, it has been asserted in certain periodicals, and notably in *The Connaught Patriot*, that a declaration has been issued by the Apostolic See, according to which the Fenians are not to be disturbed, therefore, the Supreme Congregation of the Holy Office has decreed that the aforementioned assertion is entirely false."

I beg God, etc. July 13, 1865.

> A. L. C. BARNABÒ, Prefect.

(1) In some newspapers, this decree was found inserted before the Holy Father's Allocution of September 20th, past.

(2) This, appended, is consistent with Chapter V of the Decree, *De Rescriptis*, in which the following is read: "If at any time we direct anything to your fraternity, which may seem to disturb you, you should not be troubled: carefully considering the nature of the matter for which you are written, either you should reverently obey our command, or, by your letters, you should give reasonable reasons why you cannot fulfill it, etc."

[*Latin ed. p. 291*]

CONCERNING OCCULT SECTS. 291. Recall, please, the words which Our Most Holy Lord spoke in a solemn address to the Secret Consistory on September 15th, namely: "And here, in your assembly, remembering the Constitutions of Our Predecessors, We condemn and denounce with Our Apostolic authority that Masonic sect, and other societies of the same kind (1), which, though outwardly diverse, are coalescing day by day, and which, either openly or secretly, act against the Church or against legitimate authorities, and We desire that all the faithful, of whatever condition or rank, and wherever they may be on earth, should consider them as condemned and rejected by Us, etc."

FROM WHAT HAS BEEN EXPLAINED, IT CAN BE GATHERED:

I. That the exception claimed by these sectarians, by which they believe themselves not to be included under the sanction of the Constitutions of which We are speaking, is empty, because they boast that they are doing nothing against the Church of God. For the words cited above are disjunctive: "against the Church, or against legitimate authorities."

II. Furthermore, the exception by which they believe themselves not to be included is empty, because they claim that their gatherings are not held in secret, but openly. For the words are equally disjunctive: "either openly, or secretly."

(1) Under very similar circumstances, the Fathers of the Council of Lateran IV condemned many heresies, called by various names, which seemed to be increasing day by day and destroying the vineyard of the

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Lord Sabaoth, with these words: "Condemning all heretics, whatever names they may be called by, indeed they have different appearances, but are closely connected with each other, because they agree in vanity (or, in variety) in the very same thing."

(2) From the beginning of Our Pontificate, such societies have been solemnly condemned and denounced by Us in a memorable Encyclical of November 9, 1846, with these words: "Indeed, Venerable Brothers, We know well other monstrosities and frauds, by which the children of this century attempt to attack the Catholic religion, and the divine authority of the Church, and its laws, and to trample upon both sacred and civil rights. To this belong those nefarious machinations against this Roman See, the Chair of the Blessed Peter, in which Christ laid the impregnable foundation of His Church. To this belong those sects, which, emerging from the darkness, for the ruin and devastation of both sacred and public affairs, have been repeatedly condemned by the Roman Pontiffs, Our Predecessors, in their Apostolic Letters, which We confirm with the fullness of Our Apostolic authority, and which We strictly command to be observed."

[*Latin ed. p. 292*]

292 CONCERNING SECRET SECTS. III. No less empty is the other opinion, which holds that such constitutions do not apply in places where sects are tolerated by civil government (which is a comment on false doctrine), or that they require a particular application and execution, according to the diversity of places. For the words are: "and we will have all the faithful of Christ, of whatever condition and dignity, and wherever they may be on earth, to be considered and reputed by us as proscribed and condemned." IV. Nor is the oath, which is commonly required in such sects regarding the keeping of secrets, something essential, so that they may be declared condemned. V. Therefore, such societies are already understood to be condemned, because they are secret sects, that is, spurious and adulterous societies, which, from perverse theoretical principles, seek to undermine public order, and, by hidden machinations and means, acquire an organic existence within society (1). (1) If it pleases, note this. Considering the present order of divine providence, since all power comes from God, there are only two societies and powers that are truly supreme and independent in their own order: namely, the civil and the ecclesiastical, of which the former is inferior and subordinate to the latter in terms of origin, means, and end; any other society and power that is supreme and independent, and which is neither civil nor ecclesiastical, cannot, according to the present order of divine providence, exist except as something anomalous and spurious. Such are those societies that are aptly called secret sects. For they, while acquiring an organic existence within civil society by hidden machinations and means, exercise, in a certain way, legislative, judicial, coercive, and

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executive power over their own members and over others; thus, in the exercise of this power ascribed to them, they are completely independent, and exercise it in their own name. Therefore, they act as societies and powers that are supreme and independent. On the contrary, they are completely distinct from the societies and powers that are supreme and independent, which God has established in the present order. One can only speak of a distinction from civil power. Indeed, such secret societies, although they may arise within civil society, and spread their hidden veins and fibers throughout it, are, insofar as they constitute a society, entirely different from civilly constituted societies, in which, more or less, depending on the circumstances, they live, fearing the light. Also different is the power they exercise, since it is independent, and they exercise it in their own name. Therefore, they are anomalous and spurious societies, and they usurp a power that is not derived from God, either as the author of natural order, or of supernatural order. With these brief observations, it is now clear what should be answered to the heretical objection, which is based on an equivocation of words, and which is repeatedly read or assumed in the writings of the wicked.

[*Latin ed. p. 293*]

ON SECRET SOCIETIES. 293 VI. Furthermore, one must observe how civil governments, whether they are of the Catholic or non-Catholic variety, who despise the true Church of Christ, or who, suspecting it, unjustly hinder the exercise of its authority, or indeed, who deny men their natural right to freely associate and form societies. It is sufficiently answered if one says that a man has no right to join a society that is an abomination and contrary to the order of divine providence, as is the case in Etrun. To this objection, one seems to concede too much if one were to respond only indirectly. It must be firmly held that power can only come from God, and that in the present order of things, it stems from two societies: the natural one, which, when actually constituted, is called the civil society; and the supernatural one. If a third society is interposed, which is neither one nor the other, then such a society cannot, in the present order of providence, exist except as a monstrosity, and its power, if it can be called power, will be the power of darkness. Nor should these special societies, and indeed the vast majority of them, which are of many kinds, within the bosom of civil or ecclesiastical societies, in which jurisdiction is also exercised, such as, for example, the army; or a religious order, cause you difficulty. For these are special colleges that are parts of the higher society to which they belong, and thus, as members, they participate more fully in the society, whether it be civil or ecclesiastical. Ask, for example, a soldier, whether he is a citizen, and he will answer: "I am not only a citizen, but also a soldier." Ask a religious man, whether he is Catholic, and he will answer you: "I am not only Catholic, but also a religious man"; thus, through such special

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societies, members are more closely bound to the higher societies to which they belong, and the power they exercise is derived from the respective power, whether it be civil or ecclesiastical. Conversely, ask a member of some secret society, for example, a Masonic lodge, to which society he belongs; if he knows himself well, he should, disregarding the civil and ecclesiastical society, answer: "I am only a member of the Masonic society, which uses laws as instruments to achieve its own ends." But if he does not fully recognize himself, he may answer you: "I am a member of the Masonic society, which is also a civil and ecclesiastical society." You see, therefore, three distinct and independent societies, and cohesive powers, of which, since only two can be legitimate in the present order, namely, the civil and the ecclesiastical, the third kind of society must be called spurious, and its power, if it can be called power, will be the power of darkness. These things seem to be true, provided that such societies are considered only in themselves, as societies and powers, abstracting from the end they set for themselves, or may set for themselves, which is indeed the disruption and subversion of both the civil and ecclesiastical societies; abstracting from the means by which they exercise their ascribed power, which are often illicit and scandalous; abstracting from the manner in which members are co-opted into the society, which is often impious; abstracting from the pacts that intervene, which are utterly immoral; abstracting from the doctrines they profess, which are often atheism, deism, socialism, and other similar things. Consider, therefore, all these things carefully, and add to them the characteristics of these societies.

[*Latin ed. p. 294*]

294 CONCERNING SECRET SOCIETIES. The region pleases, whether the region follows [its own ways], or in other ways. For these governments, besides not fulfilling their due office, also strive for temporal advantage. FROM THE HOLY CONGREGATION OF RITES. AESINA. On September 16, 1865. "When the Editor of the Diocesan Calendar of Aesina, and the Episcopal Secretary, humbly requested a solution from the Holy Congregation of Rites regarding the following doubts: I. "The Holy Congregation of Rites, on September 4, 1773, in 'Conchen' (1), during the observance of the Feast of the Prophet Elijah, noted the [society's] vastness, duration, vigor, or fury; the tenacious adherence of its members to the society, and its errors; and the common conspiracy in diverse names, for evil; and you will not be able to deny that the supreme architect of these societies cannot be anyone other than He who is said in the Holy Scriptures to be the prince of this world, who inspires, at least through physical influence, the leaders of these societies, and works within them; hence, it is not to be wondered at if certain diabolical manifestations shine forth in such societies, which, while formerly they were called magic, theurgy, goetia, necromancy, magical ecstasies, etc., with a change of form, are now called Spiritism, or even,

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marvelous effects of magnetism. The Ordinary of Martii a Riño designated the following: (i) The Master of Ceremonies of the cathedral church of Conchensis, S. R. C., had stated "throughout the diocese of Conchen, the feast of the Prophet Elijah is celebrated with the Office and Mass under a double rite, on the 6th [of the month]; which day sometimes coincides with the Saturday four weeks after the first Sunday of Quadragesima, when the Gospel of the aforementioned feast is the same as the Gospel of the feria, namely: 'Jesus took a loaf of bread, and when he had given thanks, he broke it, and gave it to them, saying: This is my body which is given for you...' concerning the Transfiguration; the same S. C. supplicated that they would deign to declare the following doubt, namely: 'Whether, in such a coincidence, three lessons of the third nocturn are to be said of the feast, without the ninth lesson of the feria; or, whether the ninth lesson of the feria is to be said, even though the same Gospel, or homily, is distinct; or, whether three lessons are to be said of the feria, as happens on the feast of the Exaltation of the Blessed Virgin Mary, on December 18th, when it coincides on the feria four weeks; or, whether a different Gospel concerning something common is to be taken for Elijah, and what commonality does it correspond to?' And the S. C. decided to respond on the sixth day of March: When it falls on a Saturday..."

[*Latin ed. p. 295*]

IESI. 295. Concerning the Four Seasons, the Quadragesima [Lent], the same Gospel is read, and that of the aforementioned Feast; it was decreed that it ought to be done on a weekday, a Commemoration without its Homily for the IXth Reading, unless the particular Rubric for the Feast of the Expectation of the Blessed Virgin Mary dictates otherwise: hence, the question arises, whether this same rule ought to be observed, when the Octave of the Immaculate Conception of the same Blessed Virgin falls on the IVth day of the week of the Four Seasons, which likewise has the same Gospel, and that of the aforementioned Octave.

U. "Since the Gospel of the Mass of the Immaculate Conception does not contain more than a small part of the Gospel of the IVth day of the week of the Four Seasons; it is asked, whether, if the Octave occurs on that day, the Gospel of the weekday ought to be read at the end of the Mass."

III. "On the day of the Octave of the Immaculate Conception, ought the Readings of the day of the Feast to be read in the First Nocturn, or from Scripture, when the same day of the Octave does not fall on the IVth day of the week of the Four Seasons?"

IV. "It is stated in the Rubric that the Chalice ought to be either of gold, or silver, or at least to have a silver cup inside, plated: hence, the question arises, whether it is permissible for the Bishop to consecrate a Chalice made of tin, or of bronze, or of brass with a cup of the same material, but gilded."

"The Reverend Fathers, entrusted with the preservation of the sacred

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Rites, in the Ordinary Assembly held today at the Quirinal Palace, having heard the report made by the undersigned Secretary, and having carefully and diligently considered the doubts proposed, judged it necessary to respond."

To I. The IXth Reading and Homily of the weekday of the Four Seasons are to be omitted.

To II. The final Gospel is to be omitted.

To III. Provision is made in the Rubric of the Office of the Immaculate Conception.

To IV. The Rubrics are to be followed.

And thus they responded and ordered that it be observed.

September 16, 1865.

In the Four Seasons of penance, together with their Vigils, as also in the Mass, the Office of St. Elijah is held; it is not customary to have a commemoration at the end of the Mass, with its antiphons, and to read the Gospel of the weekday, which is done in the same manner, and with the prayer; but the Homily is omitted, and the Gospel of the Feast is read, but in the Laud, the Homily for the IXth Reading.

[*Latin ed. p. 296*]

296 CATH AGEN. On September 16, 1865. "The Most Reverend Raphael De Franco, Bishop of Catacerra, stated: The Congregation of Sacred Rites has issued the following two Decrees, namely: First. - Whether an office, whatever it may be, which falls within the Octave and coincides with a Sunday, may, when it is hindered by another feast of greater rank or dignity, be recited on the day of the Octave, that is, on the immediately following Sunday: The Congregation of Sacred Rites responded affirmatively on December 7, 1844. - Second. - Whether the aforementioned feast can be postponed to a Sunday within the Octave, or to the day of the Octave when the Sunday is hindered, and is not free, as is evident: The Congregation of Sacred Rites, on September 17, 1853, in Verona, decreed thus. Thus, in the perpetual calendar published by Father Aloysius de Carpo in Ferneres." "Having related and explained these Decrees as above, the same Most Reverend Bishop, since they seem to present a certain contradiction, humbly proposed the following four questions to the same Congregation of Sacred Rites, namely: I. "Whether both of the aforementioned Decrees are genuine, which seem to be contrary to each other." II. "If they are genuine, whether the second abrogates the first." III. "If it does not abrogate, how are they to be understood?" IV. "Whether the Decrees of the Congregation of Sacred Rites concerning the translation and postponement of feasts within the Octave should be understood in the same way, both when the aforementioned feasts are fixed to a certain day of the month, and when they are movable, that is, assigned to a particular Sunday or weekday."

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"Furthermore, these questions, concerning which the Sacred Congregation wished that one of the Masters of the Apostolic Ceremonies should express his opinion in writing, were presented by the undersigned Cardinal Prefect at the ordinary meetings of the Sacred Rites, held today at the Quirinal, and the Most Reverend Fathers entrusted with the preservation of the Sacred Rites, after careful consideration, decided to respond as follows." To I and III, the authentic Decrees are given. To IV, negatively: but if the translations are hindered by the occurrence of a Sunday, the last Decree in Verona should be observed.

[*Latin ed. p. 297*]

CATHACEN. 297. Moreover, if it should happen to fall on another day, the decrees do not prohibit that it be deferred to the octave. And so, the Holy Congregation has decreed and ordered that this be observed. On September 16, 1865. Furthermore, the authentic decrees, in which an answer is given to the I, II, and III questions, are added here, and they are presented along with other related questions, since they sufficiently address the matter of the occurrence of feasts. However, for the solution of the presented question, it suffices to consider the second question in the following decree of Venice, and the third question in another decree in Verona.

VENICE. On December 7, 1841. "When the Reverend Angelus Marianus Ciseo, pastor of the parish church of Saints Gervasius and Prothasius, Martyrs, in the city of Venice, while investigating variations in the calendar of the aforementioned parish for the service of its clergy, encountered a double difficulty, which both led him to propose the following questions to the Congregation of Holy Rites for a suitable solution:

1. "Whether, if the Office of Saint Vitalis, Martyr, which is recited by the clergy of the aforementioned church according to an Apostolic Indult, falls on the fourth day before the Kalends of May, and if, on that same day, the Sunday which is the third after Easter, to which the Office of the Patronage of Saint Joseph, the Spouse of the Blessed Virgin Mary, is assigned, also falls, whether the feast of Saint Vitalis, or rather, the Patronage of Saint Joseph, should be transferred according to the rubrics to the Office of Saint Vitalis."

2. "Whether any Office, when it occurs with its octave on a Sunday, and is, as often happens, prevented by another feast of greater rank or dignity, can be recited on the immediately following octave day, if it cannot be deferred within the octave."

"And the aforementioned Holy Congregation, convened on the indicated day in its ordinary assembly at the Vatican, with me, the Secretary, present, after mature deliberation, decided to respond as follows:

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To the first question: It is to be observed concerning the principal feast, that is, of Saint Vitalis.

To the second question: Affirmative.

On December 7, 1844.

[*Latin ed. p. 298*]

VERONA. September 17, 1853. "In order that everything may be arranged in the Calendar of Verona so that no dissonance whatsoever appears, and that the Sacred Rites Congregation may be presented with the following questions to be clarified, which arose from both the Rubrics and the Decrees:

I. "To the Clergy of the city and diocese of Verona, Pope Pius VII, on November 16, 1819, granted the faculty of reciting the Office of the Solemnity of the Body of Christ on each of the eight days [of the octave], except when the Office of the first or second class is being celebrated; it is asked, whether the word 'except' should be understood broadly, so that duplications of the first or second class are also included in the exception, even when they are transferred, according to the declaration of the Sacred Rites Congregation of September 10, 1796, in a document from Palermo (1)."

II. "According to the Decree of the Sacred Rites Congregation of March 12, 1836, in a collection of Questions (2), concerning the days of the octave, the Office must always be recited, even within privileged octaves, unless a special exception has been made for those same days of the octave in the concessions; it is asked, whether in the diocese of Verona, the Office of the first class (1) is recited in Palermo, it is written: 'To the Clergy of the city and diocese of Palermo, the Apostolic See has granted a privileged octave for the Solemnity of the Most Holy Body of Christ, so that on each day of the octave, even if the Office of the second class is being celebrated, the Office may be recited with Mass of the same Solemnity, except for the duplications of the first and second class; a doubt has arisen for a priest... whether in such an exception, the duplications of the first and second class are included, whether they are occurring, or not transferred.' The Sacred Rites Congregation responded: 'In the exception, even the transferred duplications are included.' (2) In that decree, four questions are found, of which the first two are: 1. 'In those places where the Office of the Most Sacred Heart of Jesus is celebrated with the rite of the second class, does it also have its own Vespers with the commemoration of the Octave of the Most Holy Body of Christ; or, should the Vespers be of the commemoration of the Octave?' II. 'When in the concessions of privileged octaves, sometimes the days of other feasts are not excluded, is it to be followed whether there are days of other feasts within those octaves; it is asked, whether it is to be followed by the particular concessions; or rather, whether the law is to be followed, which states that the Office must always be recited, even within privileged octaves.' The Sacred Rites Congregation responded to I:

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affirmatively to the first part, negatively to the second. To II: negatively to the first part, affirmatively to the second."

[*Latin ed. p. 299*]

VERONEN. 299 "Concerning a feast of the first or second class which has an octave, if, on its proper day, it is anticipated by another feast of greater rank or dignity, and it cannot be transferred to the preceding days, it may be recited on the first day within the octave of the Most Holy Body of Christ, or at least on the day on which it would otherwise be celebrated, within the aforementioned octave of that feast."

III. "Since, according to the decree of the Holy Congregation [of Rites] of March 12, 1618, confirmed by another decree of the same Holy Congregation of February 10, 1754, in Rome, a feast of the second class transferred to another day cannot be celebrated in Venice; the question arises whether, by the declaration made by the same Holy Congregation on December 7, 1844, in Venice, the declaration made in Rome in 1754 has been repealed; or whether the aforementioned decree in Venice should be understood to apply to feasts with octaves that are assigned to a particular Sunday, so that, in such a case, the transfer may be permitted to the following Sunday, if the entire week is impeded, so that, due to the delay of the feast beyond the octave, the devotion and spirit of the people may not be diminished."

IV. "According to the decree of the Sacred Congregation [of Rites] of August 2, 1691, in *Rothmannus De Rubricis*, question X, concerning the sixth day after the octave of Ascension, it is permissible to celebrate a feast of the second class that has been transferred to another day, if that day falls within the octave of the titular feast; the question arises whether, in this case, the office should be celebrated on the aforementioned day, as some maintain, or on the day within the octave of the titular feast, to which the octave is rightfully assigned."

(1) "In the aforementioned decree in Rome, the following general principle is given, which is the reason for the decree in Venice of February 7, 1754: the term 'feast of nine lections' should also be understood to include the Sunday."

(2) "The following was the proposed question: 'A feast of the second class with an octave falls on a Sunday that is impeded by an office of a higher rank, but without the octave: is it permissible to postpone the office of the aforementioned feast to the following Sunday, as is otherwise done with the octave of the same feast, and if the entire week is impeded, or rather, is it permissible to celebrate on the Sunday, and to postpone the said office to the first day after that Sunday that is not impeded?'"

"The Sacred Congregation responded negatively regarding the first part, and affirmatively regarding the second."

(3) "In the tenth question, it was asked: 'On the sixth day after the octave

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of Ascension, is it permissible to celebrate a feast of the second class that has been transferred?'"

"The Sacred Congregation responded: affirmatively."

[*Latin ed. p. 300*]

300 VERONEN. V. "According to the Decree of the Holy Roman Church of May 23, 1846, in Tuden. (1)," in churches where the Mass is not customarily sung daily, such as on the feast of Saint Mark, or during the Rogation Days, if a procession is held, the Mass of the Rogation Days must be celebrated, in which the commemoration of the feast occurring on that day must be made with only the third prayer, which is prescribed in the second place in the Mass of the Rogation Days: it is asked, whether on these days the Preface of Easter must always be recited in the Mass, even in the Masses of the Rogation Days, even in the case of the occurrence of an "Octave," the proper Preface being observed (2)." "This doubt, having been submitted by me, the undersigned, Secretary of the same Church, at the ordinary meetings held at the Quirinal, and having been examined with mature diligence by the Most Reverend and Most Illustrious Fathers entrusted with the preservation of the sacred rites, they have decided to respond as follows:" "To I. Affirmative. To II. The recitation should be done from the previous day within the Octave. To III. That these decrees have never been repealed. To IV. That action should be taken on the day following the Octave. To V. The Preface of the Octave should be recited if the commemoration of the same takes place in the Mass." "And thus they responded, declaring the doubt resolved. September 17, 1853. (1) In Tuden, the following doubt was proposed in the second place: "On November 12, 1831, the Holy Roman Church decreed: - In churches where the Mass is not customarily sung daily, or where only a priest is present, on the feast of Saint Mark and during the Rogation Days, even if a feast occurs, if a procession is held, the Mass of the Rogation Days must be celebrated; otherwise, the Mass of the feast must be celebrated with the commemoration of the same: it is therefore asked, if after the procession the Mass of the Rogation Days is celebrated, must the commemoration of the feast occurring on that day be made in it, and must all other commemorations be made that would be said in the Mass of the day? Or, with all these things omitted, must the second and third prayers be said, which are prescribed to be said in the Mass of the Rogation Days in the missal?" "To which doubt, the Holy Roman Church responded: that the commemoration of the feast occurring on that day must be made with only the third prayer, which is prescribed in the second place in the Mass of the Rogation Days. (2) We leave the sixth doubt, which refers only to a special privilege."

[*Latin ed. p. 301*]

801 APPENDIX IX. APOSTOLIC LETTERS AND THOSE IN WHICH

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SECRET SECTS ARE CONDEMNED. LEO, BISHOP, SERVANT OF THE SERVANTS OF GOD.

"Concerning the more grievous evils which threaten the memory of Christ, our God, and which are imminent to the flock of our Savior, We exhort the Bishops, that they may devote greater diligence to those who oppose Christ with malignant sects, as is clearly demonstrated by the actions of the Roman Pontiffs. For when Our Predecessor, Clement XII, saw that the sect of the Liberi Muratori, otherwise called the Free Masons, which was not only suspected but was also clearly known to be hostile to the Christian name and to the Holy Catholic Church, and which, moreover, sought to destroy the Church with certain arguments (although they will never succeed in this), condemned it with a clear Constitution, and by his authority forbade and sought to abolish it. Understanding the most serious duty which has been imposed upon them, the Roman Pontiffs, Our Predecessors, in the "Eminentissimi" published in Quarto in the year 1738, to which Clement, Bishop, Servant of the Servants of God, addressed himself to all the faithful, vigilantly guarding the flock, and with exhortations, doctrines, decrees, and with the very spirit of the Apostolic See, according to the credit of Our pastoral care, We intend to apply ourselves with diligence, so that those errors may be constantly avoided, and that vices may be prevented from entering from above, as far as possible."

[*Latin ed. p. 302*]

302 APPENDIX ix. * Concerning the Orthodox Religion, it is most important that societies of this kind be preserved, and that they be regarded by all as kingdoms, so that those who oppose the Catholic faith in the most difficult ways may be proscribed, and that these societies, which are a source of disturbance in these times, and which have long been recognized as dangerous, be eliminated.

"Indeed, even by public rumor, it has become known to us of the grave harm that these societies cause, and that they are increasing day by day. Therefore, we have learned that some societies, or gatherings, not only harm the tranquility of the temporal republic, but also the spiritual welfare of souls, and therefore, whether they are called Masons or by any other name, they are condemned by both civil and canonical laws, because we are taught by divine eloquence that in them, people of any religion and sect are associated with each other in a certain manner, with a natural appearance of honesty, by a close and impenetrable bond, according to laws and statutes established by themselves, and that they secretly work together, both by distorting the Holy Scriptures, and by exaggerating the severity of punishments, and are bound by inviolable silence.

"But since it is the nature of wickedness to betray itself and to give signs of its own character, it is necessary that the faithful and prudent servants of

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the Lord's family be vigilant, lest such societies, like thieves, penetrate into the house, and like foxes, destroy the vineyard, lest they corrupt the hearts of the simple, and shoot their arrows at the innocent, and that the way be blocked to the widest possible opening for evil to spread, and for other reasons known to us. Therefore, these societies, gatherings, assemblies, collections, or gatherings, commonly called 'Free Masons' or 'Freemasons,' or by some other name, have aroused such suspicion among the faithful, that the very name given to these gatherings is not at all the same among prudent and upright people, but rather denotes wickedness and perversion; for if they did not act wickedly, they would not have such a bad reputation. This rumor has grown to such an extent that in many regions, elections, assemblies, or gatherings called 'Free Masons' or 'Freemasons,' or by some other name, have been condemned and prohibited, with the advice of some of our Most Reverend Brothers, Cardinals of the Holy Roman Church, and also by a Motu Proprio, and by the fullness of our Apostolic power, as we now permanently decree.

[*Latin ed. p. 303*]

By this present Constitution, We condemn, and We declare that no one, by any means, may [obtain] this [absolution], except through Us, or the Roman Pontiff for the time being.

Wherefore, to all and each of the Christian faithful, of whatever state, rank, condition, order, dignity, or preeminence, both laymen and clerics, both secular and regular, We will, and We command, that both Bishops and Prelates, Superiors, and other officials of places, as well as those appointed to investigate heretical perversity everywhere, diligently and with due regard for the sacred bond of obedience, We strictly command that no one, whatever his rank, status, condition, order, dignity, or preeminence may be, proceed against, or inquire into, those who, under any pretext or color, transgress, and that they may not presume to proceed against them, or to inquire into them, but that they be treated as vehemently suspected of being members of the Free Masons or similar organizations, and that they be received and concealed in their lodges, or houses, or elsewhere; and that those who, against these transgressors, assemble, or gather, or associate, or grant them any power or facility, shall be summoned, and, if necessary, even with the aid of secular authority, shall be compelled and punished with due penalties; and We grant and command that they have the free power to do so, either openly or secretly, directly or indirectly, in any way whatsoever, so that they may themselves, or through others, in any way, encourage, incite, or persuade others to join or participate in such societies.

Moreover, We will that notaries public, and all other persons, both ecclesiastical and secular, who may be inscribed or present in such societies, shall be entirely excluded from the benefits of this present decree, and

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that the same shall be applied to them, as if they were members of such societies, and that the same shall be applied to them with all due rigor, even if they have been inscribed by hand in any document of such societies, congregations, assemblies, collections, or gatherings.

Therefore, let no one dare to violate this page of Our declaration, of condemnation, of command, of prohibition, and of interdiction, under pain of excommunication, incurred by such actions, without any declaration, by those who, by this very fact, violate the original letters themselves.

[*Latin ed. p. 304*]

304 APPENDIX IX. "or to those who temerariously dare to contradict them." Servants of God - To the perpetual memory - Providentia Domini - Of Our Laws and Sanctions. "If anyone should attempt this, let him know that he will incur the indignation of Almighty God, and of the blessed Apostles Peter and Paul, and that he will violate Our laws and enactments, not only those which, through the passage of time or the neglect of men, may seem to be weakened or extinguished, but also those which, having recently acquired full force and vigor, are demanded by just and weighty reasons, and strengthened by the protection of Our authority."

"We deem it necessary to recall these things, so that the memory may be preserved and the enactments confirmed."

"Indeed, Our predecessor of happy memory, Clement XII, had already sufficiently condemned by his Apostolic Letters, in the year of the Incarnation of the Lord one thousand seven hundred and thirty-eighth, during the eighth year of his pontificate, the punishments of excommunication already incurred by many through their sermons; but Benedict, in the eighth year of his own pontificate, did not expressly confirm those Letters, and it was, indeed, absurd to contend that the laws of former Popes become obsolete unless expressly approved by their successors, and moreover, it was manifestly clear that the Constitution of Clement had been observed and followed. Nevertheless, Benedict, in order to remove this doubt from the minds of the sectarians, issued a new Constitution, which began on the fifteenth day before the Kalends of April, in the year one thousand seven hundred and fifty-first, in which he reproduced the Constitution of Clement in its entirety, in the very words, as it were, which are considered by all to be the most extensive and effective. Such is the Constitution of Benedict."

"Let it be known to all that, by any declaration whatsoever, no one can be absolved from this, except by the Roman Pontiff for the time being, except in the case of death, so that no one may dare, under pain of excommunication, to enter or propagate such societies."

[*Latin ed. p. 305*]

APPENDIX IX. 305 * or to condemn, to receive, to conceal – previously,

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to impute to them, to aggregate, to declare, to absolve, after the Jubilee Year has passed, benignly, or otherwise, as We have decreed, to those Penitents delegated by Us, as is contained in the Letters We have issued, the tenor of which is as follows, namely, etc., etc., etc. Often, then, or whenever We have communicated, We have granted, especially to those penitents who confessed to them, the same absolution, to be administered in Our name and by Our authority, provided that they diligently observe the prescribed regulations.

But since, as We have learned, there have been some who have asserted, and commonly boasted, that the aforementioned penalty of excommunication, as presented by Our predecessor, was not imposed, and that, despite Our diligent inquiry in Genoa, We have not omitted anything, so that it should no longer affect them before competent judges and tribunals against those who violate the same Constitution, and therefore, because the aforementioned Constitution, confirmed by Us, is not as if it were a mere continuation of the Apostolic Constitutions issued by Our predecessors, but rather a clear and undeniable argument, from which Our intentions are clearly expressed, and that another requirement is made.

Moreover, it has been insinuated to Us by some pious and God-fearing men that, in order to remove all subterfuges of the calumniators, and to clearly demonstrate the uniformity of Our intentions with those of the aforementioned predecessor, it would be very useful to add a further confirmation of the aforementioned Constitution; if any contrary opinions should arise concerning Us...

We can safely disregard such things, and We will entrust Our cause to the just judgment of Almighty God, adding the following words, which We believe will be sufficient:

Although, up to this point, it has been the case that among many Christians who have truly repented of the violations of the aforementioned laws, and who are distressed, and who sincerely declare that they will withdraw from such societies or congregations, and will never return to them in the future, absolution from the incurred excommunication has been granted, it is known that this opinion was once circulated among the sacred actions.

Lord, We beseech You, do not allow the objections of the reprobate to hinder Us, but rather, may the same wickedness be overcome, so that You may allow Us to be tormented not by unjust or captious flattery, but rather to love and to endure what You command: "Let the ancient discipline be observed, which Saint Gelasius..."

[*Latin ed. p. 306*]

306 APPENDIX IX. To Our Predecessor, and from which are concealed those things which are made known to the Venerable Servant of God, Joseph, Cardinal Thomasio, a certain Constitution was published in

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the Mass, which is inscribed: "contrary to this, Caecilius N. produced something different at Minucius Felix; therefore, this opinion can be adapted to those who offer sacrifices." "However, lest anything be overlooked by Us, it is fitting to say that we can easily deprive calumnies of their fuel by exposing them, and by silencing them, after having first heard them, so that, as certain Venerable Fathers of Our Sacred Roman Church, Cardinals, by counsel, have inviolably preserved the Constitution of Our Predecessor, as mentioned above, which is inserted verbatim in the specified form, which is considered the most extensive and efficacious of all, We have decreed, as is fitting, and with the fullness of Our Apostolic Authority, that these present Letters, in all respects and in every way, as if issued by Our own Motu proprio, by Our Authority, and by Our Name, shall be confirmed, strengthened, and endowed with perpetual force and efficacy, and We decree."

Furthermore, among the most serious causes mentioned in the aforementioned Constitution, one is that in these kinds of Societies and Conventicles, people of all religions and sects associate with each other, from which it is clearly evident how much harm can be done to the purity of the Catholic Religion. Another is the secret and inviolable pacts, colleges, and illicit bodies. Secondly, in Book XCVII, Chapter X, it is said that by imperial decree, it was forbidden that there be "Haeteriae," that is, Societies and Conventicles that could be formed and held without the authority of a Prince. Fifthly, it is already the case that in several regions, these Societies and Aggregations of Secular Princes have been outlawed and eliminated by law.

[*Latin ed. p. 307*]

IX, ix. Finally, concerning those societies and associations which, under the pretext of observing ecclesiastical regulations, are wrongly established: We declare that those who dare to acknowledge them, and who, with the same names, give judgment concerning them, and who are disobedient to our priests, will incur the mark of wickedness and perversion. Therefore, We command all, both the upright and the blameworthy, both those who are faithful to God and those who are unfaithful, and We exhort the presidents of their societies, and the ministers, and all other local ordinaries, that they may show due obedience to the laws of the Church, and that, if it should be necessary, they should not fail to invoke the aid of the secular arm for the execution thereof, and that they should also inflict severe penalties upon those who neglect to do so.

"Those who are found to have been negligent or disobedient in these matters, or who have been discovered to be so, let them know that they will not retain their honors, nor will We, for the sake of Our solicitude for the good of all Catholics, nor will We, nor Our society, nor Our community, nor Our children, grant them any assistance, but rather they will suffer

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punishments of distribution and aridity.

We desire that, even with these present decrees, which We call to mind and which We require, since We, the supreme princes and powers, elected by God as defenders of the faith and protectors of the Church, therefore, let the same faith be applied to them in all suitable ways, so that they may fulfill and demonstrate due obedience to Our Apostolic Constitutions, and all manner of observance.

Let no letters be used, if it is permitted to men to infringe upon this page of Our confirmation, innovation, approval, commission, invocation, request, decree, and will, or to dare to contradict it with reckless audacity. But if anyone should do this, let him know that he will suffer the penalties prescribed by law."

These things, as We have said, were clearly demonstrated by the Fathers of the Council of Trent, session 2, chapter 10, and long before, by the Emperor Charles Magnus in his capitularies, title I, where, after all things had been demanded,

[*Latin ed. p. 308*]

308 «APPENDIX IX. Whoever should presume to attack, with indignation, and in various ways, like branches divided, the Omnipotent God, and the blessed Apostles Peter and Paul, and the supreme Catholic Religion, and should believe that he is thereby incurring [the wrath] of the Roman people, he has undertaken to attack the most sacred and legitimate civil authority: With this calamity, Italy, and other regions, have been afflicted. To free the jurisdiction (which, hindered by pontifical governance, it itself represents, together with foreign men who are its invaders) and to restore it to its former state, the blessed memory of Pius Septimus, to whom We are indebted, condemned the Carbonari, whatever name they may be called by in those places, by their idioms, and by their customs, with most severe penalties, on the Kalends of September in the year one thousand eight hundred and twenty-one, by a Constitution. Would that those who were in power at that time had enacted such decrees, as the salvation of the Church and the Republic demanded! Would that they had persuaded themselves that the Roman Pontiffs, successors of the blessed Peter, are not merely pastors and teachers of the entire Church, but also staunch defenders of the dignity of the Church, and that they ought to suspect those who are the harbingers of the dangers that threaten the Church! Jesus Christ. - We have considered it fitting to include this example, which is of this kind.

«Pius, Bishop and Servant of the Servants of God - For the perpetual memory of the matter. - The Church, which Jesus Christ our Savior established upon the firm rock, which He promised would never be overcome by the gates of hell, has been so often and so fearfully attacked, that unless that divine [protection], which cannot be overcome, were to intervene, it would seem that it would be completely surrounded, either by force, or

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by cunning, or by other means. What happened in former times, that also, it would seem, is happening now, that some, either through the deceit of sects, whose pestiferous designs have been revealed by the Apostolic See, or through the persuasion of others, have judged this matter to be either unworthy of attention, or at least to be treated very lightly. From those ancient Masonic sects, which have never ceased, other sects have arisen, and many more are to be feared. All of these, like the members of their own body, have embraced the Carbonari sect, which was the principal one in Italy and in other regions.

[*Latin ed. p. 309*]

APPENDIX. i-v. 309. Indeed, this is a most grievous matter; for it has come to pass in our time, and we ourselves have observed it: It seems that there are men who, having been foretold by the Apostles long ago, dare to enter new and secret societies.

It must be remembered at this place how great the wickedness is that has been spread throughout Italy and other regions by a newly formed society, which, under the pretext of piety, has propagated sects that, although divided, are united by a common purpose: to turn away from the Lord and from Christ, who especially cares for the deceived, and to undermine the Church itself, with the intention of deceiving the faithful and, by a certain doctrine, separating them from the Church, and, with a misguided effort, weakening and overthrowing it. In order to accomplish this more easily, many of them often simulate a certain interest in the Catholic Religion, and in the person and doctrine of Jesus Christ, our Savior, whom they also call the leader and great master of their society. But these words, which seem to be uttered with honeyed sweetness, are nothing other than darts aimed at wounding the less cautious, by cunning men who come in the guise of sheep, but are inwardly wolves ravenous.

Long ago, this Holy See has not infrequently heard of such things, and has openly denounced them, and has revealed the conspiracies that were secretly being hatched against Religion, and indeed against civil society itself. Long ago, it has aroused all to be vigilant, so that they might be on their guard against these sects, and that they might meditate on what is being nefariously attempted.

It is truly to be lamented that, imitating in a large part the ancient Priscillians, those who are most zealous in the studies of the Apostolic See have not responded with that result which the very nature of the matter demanded, and that these wicked men have never abandoned the association they have undertaken, from which it follows that...

(1) In the Epistle to the Hebrews, chapter 18.

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(2) Colossians, chapter 11, verse 8.

[*Latin ed. p. 310*]

310 APPENDIX I X. "Those who are associated with those who are in the lower ranks, and who seem to invent new things to replace those which are of higher rank, and who despise the mysteries of the Catholic Religion, and who seek to overturn this Apostolic See, in which the principles have always flourished, and who, because of this, are subject to a certain hatred, and who, although they lack their own society, and even if other things were lacking, sufficiently persuade that no faith is to be given to their words."

"But conjectures and arguments are not needed to judge their words, as has been provided above. The books published by them, with which they attempt to do harm, are also abominable. Moreover, as can be seen from the same documents, the Society of the Carbonari gives precepts concerning morals, although they confidently boast that they demand from their members that they cultivate charity and all kinds of virtues, and that they exercise and diligently abstain from all vice. Therefore, in their practices, especially those of the higher ranks, they are most impudent in their lustful pleasures; their catechisms, statutes, and other authentic documents, which favor the formation of faith, teach that it is permissible to kill those who have revealed the secret, which was previously mentioned, who have not preserved the faith; and although the Apostle Peter commands that, after having deserted the society to which they had adhered, their errors and deceptions should be made known to legitimate judges by all Christians (2) because of the creation of all things, whether to God, or to the King as the highest authority, they openly declare that the Carbonari especially aim to give great license to everyone to invent their own religion, according to their own nature and opinions, inducing indifference in religion, so that they can scarcely devise anything that is not harmful, such as profaning and polluting the Passion of Jesus Christ through certain of their nefarious ceremonies, and commanding, as if they were exempt from it, that Paul the Apostle (3) commands that every soul be subject to higher powers; but this society teaches that it is right to incite rebellions against kings and other rulers, whom they openly call tyrants, and to strip them of their power by the highest right."

These, and other dogmas and precepts of this society, are taken from: (1) St. Augustine, Epistle 43. (2) 1 Peter 2:13. (3) Romans 13:1.

[*Latin ed. p. 311*]

xix. These things have occurred in Italia, especially with the Carbonari, who have spread throughout the land and have even dared to disrupt the Holy Mass, which caused great sorrow to the souls of Pope Clement XII and Pope Benedict XIV. We, therefore, who are the watchmen of the house of

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Israel, which is the holy Church, appointed to warn and to care for our flock, lest the flock entrusted to us by God suffer any harm, deem it necessary, with full Apostolic authority, to address this grave matter and to prevent the wicked machinations of these men.

We are also moved by the example of Pope Clement XII and Pope Benedict XIV, our predecessors, whose decrees, one on the fourth of May of the year one thousand seven hundred and thirty-eighth, and the other on the fifteenth of April of the year one thousand seven hundred and fifty-first, condemned and forbade such societies.

Therefore, to all and each of the Christian faithful, of whatever state, rank, condition, order, dignity, or eminence, whether lay or clerical, secular or regular, and to all those who are called by any other name, and who, perhaps in imitation of the Carbonari, have formed societies, we hereby strictly and under the authority of holy obedience, declare that any such society is to be considered condemned. And although we have already forbidden this society, called the Carbonari, and others, through two decrees issued by our Secretariate, we nevertheless, following the example of our predecessors, deem it necessary to impose severe penalties on those who dare, or presume, to enter or propagate this society, called the Carbonari, or others, to foster it, or to receive it in their houses, or elsewhere, and to conceal it; and we consider it necessary to separate such individuals from the rest, and to exclude them from any association or gathering.

[*Latin ed. p. 312*]

312 APPEH x ix. » It is forbidden to show interest, or to exercise power, or to effect a change, or to provide, as they say, to the Carbonari, catechisms and books, in which the Carbonari are described, which are used in their gatherings, including their statutes, codes, and all books, whether written, or printed, or in manuscript, and with which they defend themselves, to any of the faithful under the same penalty of greater excommunication, in the same manner; it is forbidden to enroll, or to include, or to cause to be included, or to be present, or in any way to encourage and foster, such a society, or anyone of the same grade, under the same penalty of excommunication; it is forbidden to read, or to retain, and we command that these books, or any of them, be delivered to the aforementioned Ordinaries, or to others to whom it pertains to receive them.

We also decree that copies of these present letters of ours, even printed, be delivered to notaries public, signed by them, and sealed with the seal of a person in ecclesiastical dignity, so that the same faith may be entirely applied to them, except for those contained in the original letters, which are protected, and to which the benefit of absolution may be obtained, if they are exhibited or shown.

Furthermore, we command all under the same penalty of excommunication, to denounce to Us and to the Roman Pontiffs, our successors, and

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to the Bishops, or to others to whom it pertains, those who have dared to violate, or to contravene, this declaration of condemnation, mandate, and prohibition; and if anyone should attempt to do so, let him know that he will incur the indignation of Almighty God, and of Saint Peter, and of the Apostles Paul and others.

Finally, that every peril of error may be more effectively averted, we command and prohibit all.

Given at Rome, at Saint Mary Major, in the year of the Incarnation of the Lord, one thousand eight hundred and thirty-seven, on the Kalends of September.

[*Latin ed. p. 313*]

"What years of our pontificate have they marked as those in which they plotted my death? 'The twentieth,' and how grievously, they do not hesitate to decree, 'Not long after this constitution was published, those who, with the same zeal, defend the tranquility of the Supreme Seat of the Blessed Peter are compelled, unwillingly, to suffer?' We were not elevated to this position through our own merits; rather, they are present, as it were, to expose the public and constant malice with which we are afflicted, and to reveal the state of clandestine sects, their number, their power. We cannot delay in inquiring into these matters. They most impudently attack the most holy dogma, and, because of their multitude, new sects are created, their precepts are weakened, and their dignity is diminished. Among these, the following is particularly noteworthy: 'Universities – it is said that in many universities, young men are not taught by upright masters, but are perverted by others, who, through false doctrines and calumnies, introduce them into the same mysteries, which are most truly called the mysteries of iniquity, and prepare them for every wickedness.' 'Furthermore, it is the case that, even after the time when the first flames of perdition, kindled by these sects, spread throughout Europe through their followers, and after the most powerful princes of Europe, whose intentions were to suppress them, had explained their plans and institutions, the codes and statutes openly declare all that we have already mentioned, and which are aimed at undermining legitimate principalities and completely destroying the Church in those very regions from which these sects originated. And this fear is certain, and has been explored: are these sects, although they appear to be of different kinds, not bound together by a nefarious and impure connection?' These sects constantly plot against the bodies of men, concealing their designs."

[*Latin ed. p. 314*]

APPENDIX I X. 314 Since these things are so, We deem it necessary to again warn and to conceal from those who are of Our mind, etc., that these sects should be condemned, and that no one should join, associate with,

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or have dealings with them, or in any way contribute to their support, so that none of them may be able to claim that they are not within the scope of the Apostolic judgment, and that they may not, under the pretext of good intentions or advice, lead unwary and inexperienced people into error. Therefore, let the Venerable Fathers, our Brothers, the Cardinals of the Holy Roman Church, and also, with due knowledge and mature deliberation, Our Societies, and all those of the same grade who are numbered among them, or who may hereafter be included, and who are opposed to the Church and to the supreme civil authorities, and who propose those things which We have mentioned above, whatever name they may be called, be forever prohibited, under the same penalties as those who, as mentioned above, are guilty of these offenses, namely, excommunication without any declaration, which penalty shall be incurred by anyone who, except in the hour of death, shall obtain absolution, unless by Us, or by the Roman Pontiff for the time being.

"Therefore, We command that all religious, both specific and individual, be strictly and expressly notified, and in virtue of holy obedience, We command that no one, under any pretext or guise, dare or presume to enter, or to have dealings with, or to support, or to receive into their houses or elsewhere, those who have given their names to these Societies, or to any of these Societies, whatever name they may be called, under the same penalties of excommunication, as We have mentioned above."

• Especially that impious and utterly wicked oath.

[*Latin ed. p. 315*]

xix. Those who bind themselves to these, which we condemn, are drawn into unity with a single flock, to which no one is made known, in which the Holy Spirit has placed bishops to govern the Church of God, and who threaten them with all kinds of punishments, both in this life and in the next. Indeed, wolves will invade the flock, who, whether they are superiors or ecclesiastics, or laymen, do not spare you, and we utterly condemn and plainly declare them damned. For what? Do they not depend on you for the greater part of their livelihood? It is lawful to swear an oath, which must be pronounced in matters of justice, as if it were a bond to hold one to a certain standard of conduct in religion and in righteous deeds. Although a just death obliges us to despise the authority of those who are evil, and those who, for this reason, cannot endure the days that are to come, and who, therefore, undermine either the Church or the legitimate civil society of many faithful, yet the pastors have the right to know those things by which the safety of those under their care is maintained. Is it not most unjust to call God Himself, as witness to wickedness, and to appeal to Him as a guarantor? The most righteous Fathers of the Council of Lateran III, in canon 3, say: "Oaths are those things which, contrary to the Church and the institutions of the Holy Fathers, come from these men." And it is

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intolerable audacity, or madness, that those who, not only in their hearts, but also openly and in public writings, say that there is no God, dare to demand oaths from all those whom they draw into their sects. Let them be horrified by the perverse doctrine of their authors and teachers, who mock the most sacred mysteries of religion, and the purest precepts of Christ, and who attack all legitimate authority. And as we are addressed by the words of our Predecessor, Clement XII, in his encyclical letter to the Patriarchs, Primates, Archbishops, and Bishops of the entire Catholic Church: "These things have been established by us to suppress and condemn these furious and wicked sects. Now, therefore, filled with the strength of the Spirit, we implore you, our venerable brothers, Catholic Patriarchs, Primates, Archbishops, and Bishops, not to act as mute dogs, unable to bark, but to bring to judgment, before the Lord, those who harm our flocks."

[*Latin ed. p. 316*]

APPENDIX IX. 316 concerning robbery and the safety of our flocks, which are so closely linked to the well-being of the Society, of all the beasts of the field. Let no one, for the glory of God and the salvation of souls, hesitate to make any sacrifice. For, those who fear, and who, for the sake of the glory of God and the salvation of souls, make all sacrifices, follow us, and we, in turn, follow those sects that object to your religion, just as your power objects to them. We recognize him who fights against us, and if they attempt such audacity, they will not endure the contradiction from the most wicked of men. It is a most grievous act to fear the power of the episcopate, the sublime divine power for governing the Church. Both are attacked, both can be utterly undermined, and the Royal authority and the Christian religion, or any power, can no longer endure or exist, if we fear deception or ambushes.

"Most beloved, in these times, we recall to mind the words with which Leo the Great, whose successors we are in the knowledge of God, and who are unworthy heirs to the name of Emperor, wrote: 'It is necessary for kings to understand that the royal power is not given to them only for the governance of the world, but also for the protection of the Church, so that, daring to teach with such counsel, they may compress those things which are subject to them, the nations which, if they perceive that your empire is wavering, will easily be led by this example to change and destroy the boundaries which Christ and the Church, instituted by Him, have established concerning sacred matters, so that not only the Catholic religion, but also your empire, may be defended and the safety of the political subjects under your rule be ensured. Those sects must be restrained by you."

"You also, all you faithful children who profess the Catholic religion, let

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your prayers and supplications be especially fervent at this time."

[*Latin ed. p. 317*]

APPE] >ixi*. 317 In our deliberations, we consider these matters. Even in that lower association, those who place light where there should be darkness, must swear, which is sufficient in itself to avoid both light and darkness entirely. Understand that it is also wicked to engage in such practices. For what benefit can the true name of God bring to you in these matters? Then, although whatever may be ascribed to this association, and those who, without any fear of God, dare to command things that are more serious and more wicked than those that are usually permitted, and who believe that those who are superior should have a certain standing, have not attained the higher ranks, it is clearly evident the pernicious power and audacity of these societies, and how they are approved and supported by all those who have given them their name. Therefore, even those who have not yet gone beyond the lower ranks of these associations, but who wish to participate in their wickedness, are like those to whom the Apostle refers in Chapter I, who are worthy of death, not only those who do such things, but also those who consent to them, as the Apostle John says in his second epistle, chapter 10, "Whoever does not love, does not know Him, for if anyone loves God, he will also love his brother." Our ancestors have not doubted that these are the firstborn of the Devil. "Beware, therefore, of their influence."

Finally, those who, having already been enlightened and having tasted the delights and sweet words of the heavenly kingdom, and having become partakers of the gifts of the Holy Spirit, and then, through these sects, have fallen into the most grievous sin, and have joined these sects. Be certain that whether they are in the lower ranks or in the higher ranks of these sects, they are guilty of the most serious offense. We warn you to reject their words from your ears, for those who, as they profess to be, have not come to be just, but are sinners, and who, by assenting to the lower ranks of these associations, compare themselves to the Pastor, and earnestly seek the lost sheep, we urge you and exhort you to return to Christ. Although they may not have been guilty of a crime, they should not swear that wicked oath, which has already been mentioned, and which is the offspring of Jesus Christ. They should hope for the mercy and clemency of God. Therefore, let them receive themselves into the hands of God.

[*Latin ed. p. 318*]

APPENDIX IX. 318 to some, and to those who have turned away from Jesus by Our Successors, or who have rejected Christ even for those who have fled from the Apostolic See by the same, who have obtained the faculty of absolution, their repentance shall not only not be disregarded, but indeed, "We desire that, like the most loving Father, who eagerly awaits

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His prodigal sons, even after they have been branded, He will most gladly receive them. We, however, through Our Notaries public, subscribed, and as far as is in Our power, we encourage them, with the seal of the person in the dignity of the Church, and we make the way easier for them to attain perfect penance, which shall be applied to them for a whole year after the original documents are presented, if Our Apostolic Letters are exhibited or shown in the region in which they dwell, then they shall have the obligation to denounce their associates in those sects, and also to observe the censures, into which those associates in those sects have fallen, and We declare that those, even those not denounced, can be absolved from those censures by any Confessor, provided they are among those approved by the Ordinaries in the places where they live. We have also established this facility for those who may happen to live in the City. But if anyone of those to whom We now speak should be so stubborn, (may God the Father of Mercies avert it) as to dare to disregard the time of vocation, requisition, decree, and will, and to rashly contradict it. Whoever should attempt to disregard the time We have designated, and should not abandon those sects, but truly repent, after that time has elapsed, the obligation to denounce accomplices, and the reservation of censures will immediately be revived upon him, and he will not be able to obtain absolution thereafter, unless he has previously denounced his accomplices, or at least has taken an oath to denounce them as soon as possible, nor can he be absolved from those censures by anyone other than Ourselves. To this most excellent Constitution of Leo XII., in which all the solemn condemnations of sects are included, which had previously been inflicted by the Roman Pontiffs, you can add the confirmation of the same by Pius VIII., who from the beginning of his pontificate, in an encyclical letter of May 24, 1829, §§ 6 and 7 following, decreed:

[*Latin ed. p. 319*]

APPENDIX XIX. Now that the corruption of the Sacred Orders has been removed, Venerable Brothers, we have convened a meeting of our esteemed members, united in spirit, to diligently pursue a common cause: to defend against those hidden societies that seek the destruction of factions, which, inflamed with hatred for God and Princes, are wholly devoted to causing damage to the Church, ruin to kingdoms, and disturbance to the entire world; indeed, they oppose God himself with their wickedness.

We have decided to write to you concerning another of these hidden societies, recently established, which, by spreading vice, undermines the true faith. These societies, composed of the most depraved individuals, who are gathered in gymnasiums and similar places, and who, through their vile gatherings, conceal their wicked designs, have aroused grave suspicion. They teach doctrines that are contrary to true knowledge of God, and their teachers, with a terrifying zeal, strive to corrupt the minds and morals of their students, drawing them away from the path of virtue. As

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a result, our predecessors, the Supreme Pontiffs Clement XI, Benedict XIV, Pius VII, and Leo XII, whom we greatly honor, have repeatedly condemned this type of sect, whatever name it may be called, and have decreed that it be suppressed. They have issued apostolic decrees, the authority of which we now confirm with the fullness of our power, and we command that they be observed with the utmost care; in this matter, we must ensure that the Church and the public good are not harmed by the conspiracies of such sects.

Therefore, we urge you, Venerable Brothers, in your respective dioceses, to act with all your authority and with the grace of God, so that not only learned men, but also those who live virtuous lives and are devoted to piety, may diligently dedicate themselves to this work every day.

(1) Leo XI explicitly condemned this sect, which is called "universitaria," as mentioned above, page 313.

(2) In Sermon 5 on Fasting, for the month of X, chapter i.

[*Latin ed. p. 320*]

3 2 0 Furthermore, regarding the proper guidance of young people [in the 19th century], it must be noted that those who, for the sake of their office, are placed in charge of their education, should be mindful of their negligence, which is to be reprehended. The same confirmation was repeated, so that those who are not diligent enough may not deceive the flock of Christ, lest they be led astray by the deceptive words of Sectarians. See how steadfast the See of Peter in Rome has been, so that such sects may be proscribed, and driven away with the plague of credulity, and suppressed, as stated in the Encyclical Letter of the Most Holy Father, dated November 9, 1846 (1).

OBSERVATION. It is the practice that prevails within the Secretariat of the Congregation of Sacred Rites, that it does not respond in writing to private petitions, or to doubts concerning liturgical matters, but rather that those who wish to receive answers should present themselves in person at the aforementioned Secretariat, and receive authentic responses. Furthermore, petitions or doubts presented by private individuals through the Agents of the aforementioned Secretariat, must, if anyone desires to have something of this kind formally requested, be submitted with the signature of the Ordinary.

(1) See page 491 in note 2.

[*Latin ed. p. 321*]

321 FROM AN AUDIENCE WITH THE MOST HOLY FATHER. PIOUS SOCIETIES. September 7, 1865. Father Vincent Basile, of the Society of Jesus, an Apostolic missionary among the Southern Slavs, knowing from his own experience, and from the accounts of other missionaries, how much damage is done by conversations and dishonest jests, humbly implored the

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Most Holy Father to deign to approve the establishment of a pious Society, in honor of the Immaculate Virgin Mary, and of the angelic young man, Saint Aloysius Gonzaga, for the purpose of eradicating conversations and dishonest jests. He proposed the following duties for those who would be admitted into this society: I. "To abstain from dishonest words and jests, and not to allow, as far as possible, such things to be uttered in their presence by others." II. "To attend Holy Confession and Holy Communion on the feast days of the Immaculate Conception (to which this society is dedicated), Purification, Annunciation, Assumption, Nativity, of the Blessed Virgin Mary, and also of Saint Aloysius Gonzaga, the patron of this pious society, or on the Sunday within the octave of his feast." III. "To recite daily the Angelic Salutation in honor of the Immaculate Virgin, together with that brief encomium: 'Blessed be the holy and Immaculate Conception of the Blessed Virgin Mary,' and once, the 'Our Father,' 'Hail Mary,' and 'Glory Be' in honor of Saint Aloysius Gonzaga, in order to obtain, through their intercession, perseverance in the holy purpose." IV. "To wear a medal of the Immaculate Virgin suspended around the neck, as a witness and sign of this promise." (i) Although we translate the prayers from the Italian language into the Latin language of Conception, it is to be understood that, as the Most Holy Father declared, this does not diminish the indulgences attached; for whatever the version, the prayers are effective in whatever language they are recited, provided that they are recited. For on December 29, 1864, in an audience, the Acts, volume 11, page 21 ff., were presented by Cardinal Prefect.

[*Latin ed. p. 322*]

322. PIOUS SOCIETIES. After these matters, the Missionary Orator requested that this pious society be united with the pious society established in Rome in August 1840, for the eradication of blasphemies, and that it enjoy the indulgences granted to that society. He also requested a plenary indulgence on the feast days mentioned above; and an indulgence of five hundred days for members who recite the Angelic Salutation, and the Our Father... Hail... and Glory... as mentioned above. Finally, he requested that this pious society be able to be established anywhere by any priest, with the approval of the local Ordinary.

From an Audience granted by His Holiness on September 7, 1865. "His Most Holy Lord, Pope Pius IX, referring me to the aforementioned Sacred Congregation of Propaganda Fide, under the Cardinal Prefect, after mature deliberation, has benignly approved the pious society, concerning which prayers have been offered, but it must be established with the consent of the local Ordinary, in the place where it is to be formed, and be subject to him, provided that the prayers and prescribed works are faithfully fulfilled by the Institute. He has granted the requested union and participation in the indulgences that were granted to the pious society established in Rome

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for the eradication of blasphemies and imprecations, by a Decree of the Sacred Congregation of Indulgences on August 20, 1840. Furthermore, He has granted a plenary indulgence applicable even to souls in Purgatory, to be obtained on the feast days of the Blessed Virgin Mary and Saint Aloysius, mentioned above, by members who, truly contrite, have confessed and received Holy Communion, and who visit the church or chapel publicly on these days, and there offer pious prayers to God, for the purpose of the association, for the concord of Christian princes, for the eradication of heresies, for the exaltation of Holy Mother Church, and in accordance with His Holiness's intention. However, it is to be understood that the plenary indulgence is fully applicable in the months in which these feast days occur, and that any member of the aforementioned society can obtain an indulgence for the eradication of blasphemies in any month, through communication of the Indult. Moreover, an indulgence of three hundred days, also applicable to the deceased, reciting the Hail and the Our Father, as in the prayers. Finally, He has granted that this pious society may be established anywhere by any priest, whether secular or regular, with the approval of the local Ordinaries, for all time.

[*Latin ed. p. 323*]

PIOUS SOCIETIES. 323 [This document is valid without any further authorization, as evidenced in the Acts of the Holy Congregation of Indulgences.] "Given in Rome, from the offices of the Holy Congregation for the Propagation of the Faith, on the day and year mentioned above." Al. Card. BERNABÒ, Prefect. "The present Rescript was presented to the Secretariat of the Holy Congregation of Indulgences on September 30, 1865. In accordance with the form of the Decree of the same Holy Congregation of April 14, 1856, and a copy thereof is preserved in the Acts. As witness whereof, etc." Given in Rome, in the same Secretariat, on the day and year mentioned above. PHILIPPUS Can., COSSA, Substitute.

Following these matters, it is necessary to present the documents pertaining to the pious society instituted for the eradication of blasphemies.

DOCUMENTS. In the year 1840, Father John Baptist Sacchetti, of the Society of Jesus, an urban missionary, during an extraordinary mission that took place in September of that same year in the areas of the Transliberim district and towards the mountains, proposed, as a remedy that had proven effective in other places, to eradicate the detestable vice of blasphemy and wicked imprecations. This remedy consisted in the establishment of a pious society of the faithful, which, with divine grace, would strive to eradicate these vices. He proposed the following duties to be performed by those who would join:

I. "Those who are enrolled shall abstain completely from blasphemy and from all wicked imprecations."

II. "Those who are in positions of authority, such as parents, lords, and

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teachers, shall undertake to prevent blasphemies and wicked imprecations among those under their authority."

III. "Those who are unable to prevent such things, upon hearing any blasphemy or wicked imprecation, shall say to themselves: 'Blessed be God; blessed be His holy name.'"

IV. "Each day, for the conversion of blasphemers, they shall recite the 'Pater...' and the 'Ave Maria...' [Our Father and Hail Mary]."

V. "Each Sunday, for the same intention, they shall recite in the church, by order of the parish priest, five times the 'Pater...' and the 'Ave Maria...,' at the time that seems most opportune to him."

[*Latin ed. p. 324*]

PIOUS SOCIETIES. In order that the faithful might be more and more incited to fulfill these duties, and that such a pious association might be continuously promoted, the Orator humbly supplicated the Roman Pontiff, that he might deign to grant to this society, to be established in Rome, the same indulgences which are enjoyed by those established in Belgium and Holland, according to the Apostolic Rescript of April 7, 1835. By order of His Holiness, Most Holy Father, Pope Gregory XVI, to all Christians of both sexes, concerning the Pious Society, of which mention is made in the prayers, and with the permission of the Vicar of the City, a Plenary Indulgence is granted once a month, on the day of each person's choice, provided that, having performed the prayers and prescribed works of the Institute on each day of the month, on that very day, truly contrite, they confess and receive Holy Communion, and visit some church or public oratory, and there offer devout prayers to God, for the concord of Christian princes, the extirpation of heresies, the exaltation of the Holy Mother Church, and according to the mind of His Holiness. Furthermore, to those same Christians who are in the agony of death, and are properly disposed, and who, with a pure heart, invoke the Holy Name of Jesus, if they cannot with their voice, a Plenary Indulgence is benignly granted; and finally, on any Sunday, by reciting five times the Our Father, the Hail Mary, and the Glory Be, as mentioned in the prayers, an Indulgence of three hundred days is granted, and for any pious work, or any recitation of prayers, according to the meaning and rules of the aforementioned Society, an Indulgence of one hundred days is generously bestowed. This [decree] is valid forever, without any brief being required, and also grants the faculty to apply these same indulgences to the souls in Purgatory. Notwithstanding anything to the contrary, in any way whatsoever. "Given in Rome, from the Secretariate of the Holy Congregation of Indulgences, on August 20, 1840." C. Card. CASTRACANE, Prefect. Hannibal GINNASI, Secretary. This is found in the Register of this Holy Congregation of Indulgences. In witness whereof, etc. Given in Rome, from the Secretariate of the same Holy Congregation,

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on September 20, 1865. PHILIPPUS Can. COSSA, Substitute.

[*Latin ed. p. 325*]

PIOUS SOCIETIES. 325 Finally, in the year 1843, on August 8th, the Most Reverend Father Gregory XVI, of blessed memory, extended the aforementioned decree of indulgences to the entire Catholic world with a new decree, which is as follows. GREGORY P. P. XVI. "For the perpetual remembrance of this matter. It has been brought to Our attention by certain religious men, who are themselves bound by vows, that the Pious Societies, to which the care of eradicating blasphemies and imprecations among men is entrusted, may enjoy the same indulgences during the times of Sacred Missions, wherever they are instituted. These are the same indulgences granted to the aforementioned pious Society established in Rome in the Oratory, to which Father Garvía gave the name. We have humbly supplicated, as may be seen in the foregoing, and as will be explained below, that We may, with due consideration, grant a favor worthy of Our Apostolic benevolence. Therefore, moved by such pious supplications, and confident in the authority of Almighty God, and of the Apostles Peter and Paul, We hereby grant and command that the Pious Societies, for the purpose of eradicating blasphemies and imprecations, to be instituted everywhere, with the permission of the local Ordinaries, as is fitting, may enjoy and receive all the indulgences, as is found in the aforementioned concession, granted to the same Pious Society of the City, provided, however, that the works of piety prescribed for obtaining them are fulfilled. To those who do the contrary, no indulgence shall be granted. These present [decrees] are valid for all times, past, present, and future. We wish that the same faith be given to these present letters, whether transcribed or even printed, as long as they are accompanied by the hand of a public notary and are protected by the seal of a person of ecclesiastical dignity, as would be given to these presents if they were exhibited or shown. "Given in Rome, at Saint Mary Major, under the Fisherman's Ring, on the 8th of August, 1843, in the thirteenth year of Our Pontificate. " A. CARD. LAXERUSCUINI.

[*Latin ed. p. 326*]

326. PIOUS SOCIETIES. From the documents presented, it is gathered that: I. The most excellent society, of which we are speaking, against impious jests and conversations, wherever it is established, with the consent of the local Ordinary, shall enjoy the same indulgences that are granted to the society against blasphemy, provided that the prescribed works of our society are fulfilled. II. All the indulgences, of which our society enjoys, which can also be applied to the souls of deceased faithful, are as follows: 1. A plenary indulgence once a month, to be chosen by each member on the day of their choice, provided that on that day the members are truly contrite, have confessed, and have received Holy Communion, and have visited a

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church, or a "public oratory," and there have offered devout prayers to God for the concord of Christian princes, the extirpation of heresies, the exaltation of the Holy Mother Church, and according to the mind of HIS HOLINESS. 2. A plenary indulgence on the feasts of the Most Holy Conception, Purification, Annunciation, Assumption, Nativity, of the Rosary of the Blessed Virgin Mary, and also of Saint Aloysius Gonzaga, under the same conditions, and with a prayer, along with the other prescribed prayers, for the purpose of the association, so that the monthly plenary indulgence remains suspended during these months. 3. A plenary indulgence at the point of death, if the members, with a contrite heart, if not with their mouth, have invoked the Most Holy Name of Jesus. 4. An indulgence of three hundred days on any Sunday, if they recite five times the "Pater," "Ave," and "Gloria," for the purpose of the association, according to the manner indicated in n. V. in the prayers for the establishment of the society against blasphemy, namely, if the parish priest in the church, at the hour he deems most opportune, recites five times the "Pater," "Ave," and "Gloria," for the purpose of the association (1). 5. An indulgence of three hundred days for those who recite the "Ave" and "Pater" as in prayers n. III, in which this condition is read: "To recite the angelic salutation daily in honor of the Blessed Virgin, along with that brief encomium 'Benedicta,' and once the 'Pater, Ave, and Gloria' in honor of Saint Aloysius Gonzaga, etc." 6. An indulgence of Cento days for... (1) This indulgence, as well as that indicated below in n. 6, you will sufficiently obtain from the favorable union of our society with the society against blasphemy, which has been benignly granted to enjoy the indulgences of this society through the communication of the indulgence.

[*Latin ed. p. 327*]

PIOUS SOCIETIES. 327 And with every work, or with any recitation of prayers, according to the spirit and rules of our society. For the sake of convenience, we add here some other excellent prayers, enriched with indulgences, which the members can use, either together or separately, to further the purpose of one or the other society.

PRAYER TO BLESSED MARY, VIRGIN. « O Lady! O Mother! I offer myself entirely to you, and » in order to prove to you my devotion, I consecrate to you today my eyes, my thoughts, my mouth, my whole self, for I am yours, O good Mother, keep me, defend me as your property. »

ASPIRATION IN EVERY TEMPTATION. « O Lady, O Mother! Remember that I am yours. Keep me, defend me as your property. » (1)

PRAISES OF THE NAME OF THE LORD. Blessed be God. Blessed be His Holy Name. Blessed be Jesus Christ, true God and true Man. Blessed be the name of Jesus. Blessed be Jesus in the Most Holy Sacrament of the Altar. Blessed be the great Mother of God, the most holy Mary. Blessed be her Holy and Immaculate Conception. Blessed be the name of Mary, of the

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Virgin and the Mother. Blessed be God in His angels, and in His saints. (2)

(1) His Holiness Pope Pius IX, at the request of the Reverend Father John Roothaan, Prefect of the Society of Jesus in Ghent, granted (Decree of August 3, 1851) the following:

1° To all the faithful, an indulgence of 100 days, once a day, to those who, in the morning and evening, recite the Angelic Salutation, and who recite the present prayers, "O Lady, etc.," devoutly and with at least contrition.

2° To all the faithful, an indulgence of plenary remission, once a month, to those who, having recited the aforementioned prayer daily, confess, and having received Holy Communion, visit some church or oratory and pray there for a time, for the intention of the Supreme Pontiff.

3° An indulgence of 40 days, each time, to those who, in some temptation, pronounce the same aspiration, "O Lady, etc.," devoutly and with a contrite heart. These indulgences can be applied to the souls of the faithful departed.

(2) In order that the Most Holy Name, which is worthy of praise from the rising of the sun to its setting, may be invoked by all Christians with special devotion, His Holiness Pope Pius VII granted, on July 23, 1801, an indulgence of one year for each recitation, provided that the praises are recited with at least contrition and devotion. His Holiness Pope Pius IX declared that this indulgence is also applicable to souls in Purgatory, on March 22, 1847.

[*Latin ed. p. 328*]

828 FROM S, C 0 1 8 EGTO 1 (FROM THE SACRED CONGREGATION. December 7, 1861. Session 23, chapter 5, concerning Reforms). Titius, having been orphaned in infancy, was enrolled among the students of the diocesan seminary. In the year 1833, he received the sacred order of subdeacon, and subsequently, maintaining the proper intervals, he was promoted to the orders of deacon and priest, in which he ministered until the year 1841. However, in that year, abstaining from the exercise of sacred ministrations, he devoted himself entirely to legal studies and secular affairs. Finally, spurred by the promptings of his conscience, and by the exhortations of his own Bishop, he presented a supplication to the Sacred Congregation, in which, explaining that he had been compelled, against his will and under the threat of terrible consequences from his sister's husband, and also through repeated and urgent instigations from his mother, to receive the sacred orders, he requested that he be declared free from the vow of celibacy, and from all other obligations attached to the sacred orders; or that a dispensation be granted to him; or, at the very least, that permission be granted to him, as far as it seemed permissible, to live in the secular state and to exercise the profession of an advocate in the forum. After the Ordinary had offered prayers for information and guidance, and had also

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initiated the canonical process; and after several priests and other upright men, with the assistance of his curia, had examined the case, the Most Reverend Ordinary, and further, after most humble prayers had been offered by the Reverend Father Aloysius Giorgetti of the Order of Minor Friars, that a plenary indulgence might also be granted for the aforementioned recitation, THE SAME HOLINESS granted that all the faithful, of both sexes, may gain a plenary indulgence, once at least in each day, by reciting the Rosary throughout the entire month, on any one day of the month chosen at their own discretion, provided that they are truly contrite, have confessed their sins, and have received the Holy Communion, and have visited a church or public oratory, and there have offered pious prayers for a certain period of time, according to the intention of THE HOLINESS; and that this power may also be exercised to grant a plenary indulgence to the faithful who have also passed away. From the decree of the City and the World, August 8, 1847.

[*Latin ed. p. 329*]

SACRED ORDINATION. 329, having received the testimony of the oath taken, which he transmitted to Rome, together with his report. This report from the Bishop contained the following: Titus, with an unwilling and troubled spirit, had entered the ecclesiastical state and received the sacred orders; however, the Bishop himself believed that, especially during the interval of time between the various ordinations, it would have been easy for him to present complaints to his own Bishop regarding the coercion he was suffering, and to request effective assistance from him; nor could it be certainly asserted whether the silence observed by him after receiving the orders was due to coercion and fear, or rather to some other inclination. Regarding a later period, the Bishop stated: "When I assumed the governance of this diocese in the year 1838, I found Titus, a priest, fully exercising his priestly duties, even preaching during Lent; and he had obtained the title of participation in the church of his native country. In the year 1844, after the death of his husband, the brother of his sister, it suddenly happened that, renouncing the service of the Church and ecclesiastical ministrations, he questioned the validity of his ordination, as if it were forced." "Thus, having lived for many years as a layman, he devoted himself to secular and worldly affairs, and I, repeatedly, have attempted to recall him from this state, but I have achieved no effect other than that he did not abandon his ecclesiastical habit, nor did he lead an immoral life, etc." After these statements, opening his mind, since he considered his ordination to be completely valid, he warned: "Just as a grave scandal would be inflicted upon the people if such a priest were to be seen again exercising his priestly duties, so too a similar scandal would be inflicted upon him if, having obtained permission, he were to lead a life involved in secular affairs, like a lay man; therefore, he considered it appropriate

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that, if any faculties were granted to him, he should use them outside of his own country." The matters which were deduced from the completed process concerning the coercion and fear inflicted are to be found in the following discussion. In the meantime, the records of the process were sent to the Defender of the Sacred Order, by official duty, so that he might write his observations regarding the validity of the Sacred Order. Two questions were presented to the Sacred Congregation, which are found at the end. 1.

[*Latin ed. p. 330*]

330 CONCERNING THE ORDINATION. A synopsis of the discussion. WHAT COULD BE BROUGHT FORTH IN FAVOR OF TITUS, FIRSTLY, THE DOUBT. — Titus, establishing a defender for himself in Romana, maintained that he would demonstrate the nullity of the Holy Ordination due to the lack of the required intention, according to what is said in Volentieri, concerning the subdiaconate order of May 31, 1794; otherwise, he maintained that he was not bound by the vow of continence, and other obligations attached to the orders, on which the defender insisted with all his might. He argued that, although the present matter does not concern absolute coercion, or external force, which renders the reception of the sacrament of Holy Orders null, according to chapter Maiores, § 1, it is also questioned whether baptism, in which it is written: "But he who does not consent, but utterly contradicts, neither receives the thing, nor the character of the sacrament: because it is more to expressly contradict than to least consent; nevertheless, Titus observed that he was not bound by continence due to a causative coercion, or conditional force, as is stated in Valenlien, cited, §, as follows (1). (1) This type of cause was first raised in the Holy Rota of Romana on January 15, 1575, about which Fagnanus speaks in the cited chapter Maiores, n. 103, where he says: "This case, or a similar one, occurred in the Rota, in the cause of Valentina, concerning the nullity of the reception of the subdiaconate order, before Caesar De Grossis: and the doubt proposed was whether one promoted to the order of subdiaconate by force and fear, which could affect a steadfast man, was bound to the obligation of continence, so that he could not take a wife, unless there was another impediment." After a lengthy examination, on January 15, 1575, the Lords held: "One ordained to the subdiaconate by conditional force is not bound to continence, if he has a wife, but if he does not have a wife, he is bound, according to the distinction of Goffredus, and his followers, as mentioned above, n. 97. And because the subdeacon about whom they were speaking was not married, they said that it would be safer to ask for a dispensation from the Pope to contract marriage, and that such fear would provide a just cause for granting it...." "But later, on March 22 of that year, the cause was again proposed, and the article more carefully discussed, the Rota resolved: "One promoted to the subdiaconate by conditional force is not bound to observe continence, even if he does not

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have a wife, according to the second opinion of John and his followers. The Lords were then moved by that irrefutable reason, that every act requires not simple will, but free and spontaneous will, such as continence, which requires freedom from coercion, d. cap. Integritas 32 q. 1, if it is done by force, or by a coerced will, it is not valid..." Then, arguing from the vow, which is expressly attached to the order; "for a boy ordained to the subdiaconate, before the use of reason, is not bound to continence; because, as he cannot obligate himself to a vow expressly, so neither can he tacitly, according to Innocent, in cap. Velnon est compos..." Thus, this masterful decision was intended to be strengthened by the doctrine, in which the authors distinguish between coercion and absolute force, from coercion and the force which they called causative or conditional, to...

[*Latin ed. p. 331*]

SACRAMENT OF HOLY ORDERS. 331 The Defender sought to demonstrate the causative, or conditional, force, based on the importunate and persistent instigations and prayers of the mother of Titus, and even more so, on the repeated and atrocious "lines" of the sister's husband. The economist of the seminary testified that one day he found Titus together with the aforementioned husband of the sister, "who was strong of body," (these are the words of the witness), who, looking at me as I was passing, hid his hand under the cloak with which he was clothed, as if in the act of concealing or guarding something, and I heard him muttering words, among which he said threateningly: "If you do not become a priest, you will pay me!" Another priest who was staying at the seminary at that time, having seen Titus disturbed and saddened after this incident, and having asked him about the cause of his sorrow, Titus replied: "He is disturbed and saddened because the sister's husband threatens him." Those who are absolutely coerced are considered to be validly ordained; but those who, through coercion or causative, or conditional force, are validly ordained, are nevertheless exempt from the obligations attached to the order. Nevertheless, it may be asked, what constitutes absolute coercion, and what constitutes causative coercion. Barbosa, in *Vota decis. tot. 77, n. 3*, writes: "For a proper understanding of the terms, it must be presupposed that there is a great difference in purpose between precise and absolute force, and between that which is called causative or conditional: for when coercion to receive the sacraments is precise and absolute, as happens in the case of one who is held by force, or by chains, the character is not imprinted, nor is he bound to observe the vow of chastity, just as Baptism is not conferred. See *Maioris*, §; also, concerning Baptism, *cap. Presbyteros*, 50 *dist.*, it is said that such a person is considered to be invalidly ordained, and where ordination is not valid, neither is the precept or vow attached to a valid ordination valid...." But when the force is conditional, or causative, as in the case of

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one who consents to be ordained or baptized in order to escape danger or death, the character is imprinted; for the will is present, albeit indirectly; and a coerced will is a will." The same author had already discussed this question in *Voto 37* of book 2, where similar words are found, and in that vote, n. 13, he adds: "Another opinion (to which I adhere as more probable) holds that one who is initiated into the sacraments by force, or by unjust fear, falling upon a man who is subject to the law of perpetual continence by virtue of a vow, is not bound by that vow, and this is based on the most solid foundations. First, by the example of marriage, which, when extorted by great fear, is annulled by law...Then, by the example of solemn profession, which is also annulled by law if it is emitted by force or by great fear." Therefore, from this teaching of the author, it is understood that a subdeacon is not bound by the law of continence if he proves that he was coerced by such force and fear to receive the order of subdiaconate, which would be sufficient to invalidate marriage or a religious profession.

[*Latin ed. p. 332*]

332 SACRAE ORDINATIONIS. "ut vitam auferret, nisi in proxima ordinatione, ordinem reciperet." De quo metu eidem incusso, alii etiam conveniebant testes. Quibus adiungebantur Titii ipsius conquestiones, de coactione quae eidem inferebatur, et apertae obtestationes de animi sui aversione et repugnantia ad statum ecclesiasticum. His accedebat consilium ab eo initum committendi cuidam collegae suo in seminario, ut de hisce certiorem iaceret Episcopum, ut ab eius ordinatione abstineret. Imo ob hanc rem, prout alter testis deposuit, «ipsemet (Titius) consilium iniit mittendi » ad proprium Episcopum accusationem sui de quibusdam crimini» bus non commissis, ut indignus appareret, et ita interciperetur » sua ordinatio.)) Ordinationis autem tempore ita animo viribusque fractus apparuit Titius, ut alieno auxilio ad sacras induendas vestes indigere visus sit, ceu desposuit testis, tunc in seminario praeceptor. Ac denique ipsa publica fama concurrebat, qua persuasum erat, non sponte, sed coacte Titium sacris ordinibus fuisse insignitum. Quibus enarratis, concludebat Defensor dubitandum non esse, quin uti sacrum subdiaconatum, ita et alios ordines, quoniam coactio perduravit, ex gravi incusso eidem metu, et invito prorsus animo* susceperit, ita ut ad continentiae obligationem, aliorumque onerum Titius non teneretur. Repellebat porro Defensor difficultatem sibi obiectam ex beneficio in ecclesia receptitia obtento, adducendo exemplum in Namurcen. Dispensationis in O Martii 1731 in qua S. C. C. respondit non teneri ad continentiae legem servandam subdiaconum, ex probata coactione, quamvis ipse canonicatu auctus esset. Deinde alteram difficultatem ex eo desumptam, quod non reclamaverit usque ad annum 1841, reiiciebat, dicens, eo usque perdurasse coactionem, qua cessante, morte nempe viri sororis suae, statim facto» suo Titius reclamavit; et quia eo usque causa metus perduraverit, omnes actus gestos in ordinum exercitio meticulosos prae-

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sumi debere contendebat; ceu perpendit S. Rota in decis. 870 n. 12 coram Emerix iunior e. QUAE OBSERVARET DEFENSOR QUOAD ALTERUM DUBIUM. — Quatenus affirmativa responsione ad primum dubium decerneret S. Congregatio, instabat Defensor ut a dictis oneribus solveretur Titius ope dispensationis; sufficientem enim causam huius dispensationis.

[*Latin ed. p. 333*]

SACRED ORDINATION. 333. He considered that the coercive action of Titus was, as has been stated several times, a matter to be investigated by the Holy Congregation of the Council. He readily conceded that, unless a dispensation from the law of continence were to be granted, at least it should be permitted for him to live in the lay state and to exercise the office of advocate; especially since, as the Bishop testified, he would return to the sacred ministry not without the admiration and scandal of the people. WHAT THE DEFENDER OF THE ORDER WAS OBLIGED TO POINT OUT. The defender of the order pointed out that the proofs presented were deficient in demonstrating the grave and serious fear that was required in order for the validity of the received orders to be declared infirm, and for the vow of continence to be relaxed, either by a declaration of nullity or by a dispensation from Chapters "De audientia" and "Cum dilectus." Regarding those matters caused by force or fear. He maintained that the value of those orders was seriously proven by the actions of the one receiving them. Furthermore, he asserted that Titus had given no sign, either in fact or in words, at the time of receiving the sacred orders, nor in the interval of time that elapsed between one order and the next, from which it could be inferred that he had received the sacred orders with a serious and deliberate intention. He argued that the threats and force that were alleged should not be given undue weight, since grave fear and coercion are not easily admitted, especially in a man of constant character. He did not consider that the threat made by his brother – "Unless you become a priest, you will pay" – was sufficient to constitute such a grave fear. For, the young man, who was then twenty-one years old, had, moreover, sought protection from his superiors against the threatening man, and they had certainly not refused it to him. Indeed, he added that, even if grave fear were proven to have been instilled, it should nevertheless be considered purged by the time that elapsed between his advancement from the subdiaconate to the diaconate, and from the diaconate to the priesthood. For, no witness testified to the continued fear or coercion. On the contrary, while living in the seminary, he could have avoided advancing to the other orders during that long interval. After these points, he stated that the objections raised by the witnesses should be rejected, as they concerned matters that had occurred several days, or even months, before the ordination itself; nor

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should the following be considered...

[*Latin ed. p. 334*]

384 OF HOLY ORDINATION. He considered that, given that the very fact itself established it, the following declarations had been in effect up to the year 1841 in those received into the orders, and especially into the priesthood. Furthermore, in these circumstances, or even in more difficult ones, it was observed that dispensation had been denied concerning the vow or precept of continence, in the Dispensation of Aretina, February 17, 1731; in the Dispensation of Constantina, May 22, 1734; in the Order of Subdiaconate, May 31, 1794 (I), and in others cited there. Moreover, it was observed *ex officio*, that the office of advocate was sometimes permitted to a secular priest by pontifical dispensation, so that he might be able to plead both civil and criminal causes in even lay tribunals, as is customary with lay advocates; and it is not forbidden to him to demand a reward for his services. These dispensations are granted to a priest only for the purpose of enabling him to obtain an honest livelihood; and therefore, it is not permissible for him to use such a faculty where he has property, or other means, by which he can be suitably supported. According to what is noted by Benedict XIV, *De Syn. dioec.*, c. 10, n. 12. But a greater difficulty seemed to arise concerning dispensation for wearing secular clothing. Nevertheless, it was observed that this had sometimes been permitted, given the particular circumstances, but with the caution that the priest should wear clothing of form and color suitable to his state. Having considered these matters, the following doubts were proposed for resolution. I. "Is an Orator bound to the vow of continence, and to other obligations attached to Holy Orders in this case?" "And to what extent?" (I) In the aforementioned case of Valentia, the Holy Congregation held that a subdeacon was bound by the law of continence, who, after omitting other things, had solemnly protested before a public official, with these words: "that the reception of the subdiaconate by me would not be, but an effect of violence and persecution." And, disapproving of this, it reserved to itself "the right to act in due time, according to canonical laws, against the reception of the subdiaconate, which he was about to receive, only in order to protect himself from the persecutions of his parents." After this protest had been made, he went to the place of ordination, and after eleven days from the making of the aforementioned protest, he received the subdiaconate. And he did not minister in the order received, except on one occasion, at the request of his uncle, and after a year he complained.

[*Latin ed. p. 335*]

SACRED ORDINATION. 33 II. "Whether it is necessary to consult with the Most Holy See regarding a dispensation from those same obligations, or at least, so that, the obligation of the vow remaining, the Orator, still

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wearing secular garb, may exercise the office of advocate in court."

RESOLUTION OF DOUBTS. — The Sacred Congregation of the Council decided on December 7, 1861, to respond as follows: To I, affirmatively, and furthermore. To II, negatively, granting only to the Orator the faculty to exercise the office of advocacy even in secular court, provided that he acts only in defense in criminal cases, with the prudent judgment of the Bishop having been expressed to the Most Holy See.

WE COLLIGATE: I. That, in order for the reception of the sacred orders to be considered invalid in the external forum, it is necessary to prove absolute coercion in the very act of ordination. For such coercion demonstrates a will on the part of the one being ordained that is positively contrary to the reception of the sacred orders. II. To effectively remove the burdens attached by ecclesiastical law to the order of subdiaconate, it suffices to prove the force and grave fear applied to a constant man, and directly applied to obtain the act of reception of the order. Such a cause is compared to a cause of marriage, or of religious profession, extorted by force and fear. III. In the present case, however, such force and fear do not appear to have been conclusively proven. IV. Indeed, Titus seems to have determined, after a certain period of time, to receive the order of subdiaconate, and even more so, the other sacred orders, although he did so to avoid difficulties and annoyances. V. And this is sufficiently evident from the absence of any objection raised, either before or after the reception of the subdiaconate. VI. Moreover, from his conduct from the time he received the subdiaconate, until the time he relinquished the sacred ministrations, his actions have demonstrated his conviction that the orders were rightly received. VII. In these circumstances, he who has received the sacred orders is held to be bound to fulfill the obligations attached to those orders, and no Apostolic dispensation can supersede those obligations, even though he may seem worthy of some indulgence from other considerations.

[*Latin ed. p. 336*]

OF MARRIAGES. On January 31, 1863. Session 24, chapter 1, concerning the Reform of Matrimony. A certain Caius, a virtuous young woman, daughter of a shoemaker, was seduced by a young man named Titus, born into a patrician family; for he had conceived a child by her through improper relations. Therefore, when Titus was preparing to enter into marriage with another woman, Caius brought a suit before the court, seeking to prevent Titus from taking those vows, since he had seduced her under the promise of marriage. Consequently, after the commencement and completion of the proceedings, a judgment was issued with these words: "The impediment raised against Titus shall stand, and he shall be bound to marry Caius." After this judgment, Titus appealed to the Sacred Congregation. The Ordinary was consulted for information and his opinion, and after hearing both parties, and after setting the same time limit for

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them to present their rights before the Sacred Congregation, to ascertain the outcome and transmit the proceedings; the Ordinary fully complied, and among other things, reported that Titus had already undergone a temporary banishment in a certain city, ordered by a lay magistrate, and had also been detained for six months in a religious house for spiritual exercises, but had nevertheless been unable to be brought to enter into marriage with Caius. Therefore, the same Prelate concluded, "Since Titus cannot, by any means, be induced to enter into marriage with Caius, due to his constant reluctance; since coercion cannot be applied to this type of marriage, which coercion would bring about quarrels and dissensions; and since it is not otherwise appropriate for the parties to remain indefinitely in this type of litigation; I consider that Titus is obligated to give Caius the sum of 600 crowns, which is double the dowry that Caius possesses." Furthermore, the following facts were deduced from the proceedings transmitted to Rome. There were indeed witnesses who testified, based on hearsay, that they knew that Titus had promised marriage to Caius, and that he had seduced her under this promise. Another witness, also based on hearsay, testified that Titus had said: "I was the author of this evil, and I will provide remedies for it." Moreover, there were witnesses who had heard from the mouth of Titus himself, and who testified. For example, the witness A. truthfully asked Titus whether he would take Caius as his wife; to which he responded:

[*Latin ed. p. 337*]

CONCERNING MARRIAGE. It is clear that he never intended this, as even Caia herself knows. Furthermore, witness A. revealed Titian's intention to Caia's father, in the presence of Caia herself, who remained silent. The parish priest testified: "Titian told me that he had decided to marry Caia, because he had seduced her with the intention of marriage, and also: 'After fifteen days, when I returned to you, Titian,' he said to me, 'the things I had declared were not true; but I told you this because of Caia's insistence, so that her parents might be appeased.'" Two other witnesses also heard Titian say, in various conversations, that he had always intended to marry Caia; that he was prepared to issue a written obligation; and that he had assured Caia that he would marry her in due time, namely, after the death of his parents. Finally, another witness heard Titian say: "I did not seduce Caia with a promise of marriage; nevertheless, in order to appease the girl, and her afflicted family, both Caia and her father, I promised her marriage after the death of my parents."

Given these facts, two doubts are raised, which are presented at the end. A concise discussion follows.

DEFENSE OF THE MAN'S LIBERTY REGARDING THE FIRST DOUBT.—More matters were observed with learned precision, which we here explain in detail through these chapters. Therefore, in favor of

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Titian, it was observed that the contract of marriage carries with it very serious obligations, and therefore its existence must be demonstrated so that all, or even the slightest, doubt must be excluded, as is derived from the thousands of Resolutions of the Sacred Congregation of the Council. In any doubt, the laws have always been more inclined to induce freedom. L. 47 ff. concerning obligations, and L. 99 ff. concerning obligatory matters. Furthermore, the witnesses, after careful examination regarding the existence of the marriage, either do not testify, or testify vaguely, or assert based on public rumor, or finally, they affirm that the same promise, which followed pregnancy, was made solely to appease the girl, and also her parents. Therefore, it was concluded that either any promise of a future marriage should be excluded, or that the promise should be resolved into a mere wish, or into a desire to contract marriage, which are far removed from the obligation of marriage. Acts, volume I, page 22.

[*Latin ed. p. 338*]

338. OF BETROTHAL. But if any form of promise is attempted to be extracted from the testimonies of witnesses, such a promise, if given with a deceitful intention, is deemed invalid, as is evident from the words of Titus, as previously explained: that he never intended to marry Caia; and also, that he promised marriage in order to appease the girl, who had been seduced, and her afflicted family. Furthermore, it is established in law that the words of the speaker, but also their intention, must be considered; and that the actions of those acting beyond their own will do not have effect (L. 1, 6/f. de acquir. rev. dom.; L. 19 ff. de reb. credit*). And to this matter, the authority of Reiffenstuel in book 4 of the Decretals, title 1, number 45, was brought forward. Such a deceit, if any promise was made, was further confirmed by presumptions. It did not seem likely that Titus, born into a patrician family, would seriously intend to marry the daughter of a tailor, who did not possess a notable fortune; especially since it was reported that he had foreseen the opposition of his parents to this marriage, against which he had never declared that he would enter into marriage. Moreover, it was added that there were also witnesses brought forward by Titus himself, who testified that at the very time when Caia was being frequented by Titus, she had been engaged in relations with one man, and then with another. Furthermore, Titus would not have allowed such new affections; nor would he have tolerated the preference of more obscure lovers. Therefore, it was concluded that any promise of marriage made by Titus must have been simulated, and therefore ineffective in creating the bond of betrothal, as the Authors teach. Moreover, it was added that, even if Titus had made a serious promise, Caia's reciprocal promise still needed to be proven. For betrothal requires mutual and reciprocal faith. However, not a single witness indicated Caia's reciprocal promise. And although it might seem that the lack of this reciprocal promise could be

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supplemented by a premarital defloration, it was pointed out that such a defloration, by itself, can only provide a certain presumption, and that this presumption is ineffective in establishing the obligation of betrothal (Concius De spons. filior. famil. vot. 7, n. 72; Reiffenstuel in Lib. 4 Decr. tit. 1, n. 67, etc.). Indeed, in the present case, since the man's promise preceded the defloration, but followed it, the very foundation of the presumption seemed to be undermined.

[*Latin ed. p. 339*]

OF BETROTHALS. OBSERVATIONS TO BE TAKEN INTO ACCOUNT IN FAVOR OF THE MAN, REGARDING THE SECOND DOUBT. — Since the Holy Congregation had rendered its judgment concerning the validity of the betrothal, it was necessary, in the second place, to examine another matter; and with regard to obtaining a dispensation, the following observations were made. Although, according to canon law, the consent of the contracting parties alone is sufficient for the validity of a betrothal, Cap. Vetus. 13 De sponsa!; Council of Trent, Session 24, on Reform, chapter 1; nevertheless, the consent of the parents is also desired; Canon: "Not all" (13 causes, 32 distinctions, 2). Therefore, the Church has consistently rejected betrothals without the consent of the parents; Conscius, De sponsa!, vol. 1, no. 151; Bellarmine, vol. 2, controversy on marriage, book 1, chapter 1, section 20. Therefore, the dissent of the parents appears to be a sufficient reason for obtaining a dispensation regarding betrothals; especially if the consent of the parents has been added as a condition of the marriage. But in this case, Titus's parents were said to be opposed to the marriage of their son with Gaia. Furthermore, there was a disparity of condition, which, as Layman also states, can also serve as a reason for granting a dispensation, book 5, treatise 10, chapter 1, no. 14; Castropal, part 5, treatise 28, dispensation 1, point 27, no. 7; Navar, Manual, chapter 16, no. 18. Moreover, Titus's unwillingness to enter into that marriage was observed, and this could not be overcome, either by a temporary postponement or by his confinement in a religious house for up to six months; so that, as the Ordinary stated, any use of coercion, or any marriage entered into unwillingly, would inevitably lead to quarrels and scandals. In these circumstances, marriage should rather be avoided than encouraged, as the Authors commonly teach. And the Holy Congregation decided to grant a dispensation in such cases, after the proper dowry had been paid and damages made good, as in Senogallien, Spons. 1 September 1714; in Gallipoli, Sponsa!, 28 February 1733; and also in Ugentina, betrothals, 29 November 1862.

DEFENSE IN FAVOR OF THE WOMAN, REGARDING THE FIRST DOUBT. — On the contrary, in favor of Gaia, it was noted that the defilement of an honest girl, along with other indications, provided sufficient external evidence to presume a betrothal, so that the man could be condemned for failing to fulfill it; Fagnanus, in Decretal. I. 4, chapter

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Ad nostrum; Sánchez, De matrim., I. 1, distinction 16, no. 6, distinction 22, no. 3, 5, and 6; Sporer, part 4, chapter 1, section 2, no. 196; and others. Indeed, an honest...

[*Latin ed. p. 340*]

34. Concerning Marriages. A girl is not considered to have suffered such a disgrace, unless it is in view of a future marriage. However, in fact, all the witnesses testified to the exceptional virtue of Caia. And indeed, it was demonstrated that Caia had been seduced with a view to a future marriage, through the testimony of the Parish Priest. For Titus had told the Parish Priest that he had decided to unite himself to Caia in marriage, because he had seduced her with the intention of marriage. This confession of Titus was confirmed by the declarations of other witnesses, as mentioned above; so that this conviction even prevailed among the common people. Titus was not to be believed when he stated that he had promised Caia marriage after her seduction, in order to calm the girl's mind, and that of her parents. For this statement of Titus should not be considered, firstly, because it is directed towards his own advantage and his own exoneration; and secondly, because it contradicts the very strong presumption of the law. However, given these circumstances, it was argued that Titus had not made the promise of marriage with a deceitful intention. Indeed, in the external forum, a promise is always presumed to be serious, unless the contrary is clearly demonstrated; therefore, the promisor must be condemned unless he legitimately proves a joke, a fiction, or fraud. *L. 7 §. 2 ff. de suppellect. L. 13 Cod. de num. pecun.* Furthermore, how much weight should be given to the pleas of those who allege their own wickedness in their favor, is explained in Chapter "Among those who are beloved. Concerning Proof." After this, it was brilliantly added that, even if one could doubt the seriousness and prior nature of Titus's promise, nevertheless, he was obligated to enter into the marriage bond with the defiled girl; if, indeed, a formal and repeated promise, made at least after the event of her pregnancy, could not be denied by Titus. But if this were not enough to create an obligation, the promise made in the heat of love; nevertheless, it should be considered sufficient that a subsequent promise, made by Titus not only to the woman herself, but also to her parents, both by himself and through intermediaries, was made, and accepted by the woman, even if she remained completely silent; *Reg-iuris 43 in 6*. For the promise in this case was not simple, but qualified, that is, made for an antecedent cause, and with its corresponding respect and reparation. From this, it was argued that the obligation of the man to enter into marriage arises, if one, from the contract of betrothal, and certainly from this qualified promise.

[*Latin ed. p. 341*]

MARRIAGES. §41. [Referring to arguments from Chapters 1 and 3 of the

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book *De Pacis Pactis*, Canon 12, causes 2, and L. 7 ff. *De Partitionibus*; Sánchez, *Disp. 5, n.*, which Reiffeastuel, in the cited work, number 17, calls common; and the Sacred Congregation's decree *in Lycienis Sponsalibus*, December 18, 1728, §. non.] WHAT FAVORS THE WOMAN IN DENYING THE DISPENSATION. — Furthermore, there were reasons that favored the woman, for which the dispensation from the marriage seemed to be denied. Indeed, Titus's parents were opposed to this marriage, due to the disparity of condition; moreover, it was argued that there was not sufficient proof of Titus's noble birth. From a single diploma that was presented, it was shown that, at the end of the previous century, one member of Titus's family had been counted among the patricians of his city. Moreover, although Titus's father practiced the trade of a tailor, at that time he was engaged in the silk trade, in which Titus's family had sometimes been partners, as some of the witnesses seemed to indicate; and Titus's sister had long-standing marriage negotiations with Titus's cousin. With these difficulties having been considered, a canonical impediment opposed the dispensation, which states that a girl who has been defiled, even under a promise of marriage, whether real or feigned, must be given to the one who defiled her in marriage, according to Chapter 1, and 2 *De Adult.* and *Stup.*, and the Sacred Congregation's decree *in Ugentina Sponsis*, of November 29, 1862, and also in *Neapolitana Sponsis*, of September 17, 1722, in which the following questions were proposed: I. "Does it appear that there are betrothals in this case?" and, if affirmative, II. "Is Dominic to be compelled to contract marriage with Agnes through his words, or rather, is he to be held to provide a dowry, etc., in this case?" The answers were: to I, affirmative; to II, affirmative regarding the first part, and negative regarding the second. Therefore, having considered everything pertaining to both sides, the following questions were proposed: I. "Should the opinion of the Court be confirmed, or rejected, in this case?" and, "To the extent that it is affirmative regarding the first part, and negative regarding the second." II. "Should the matter be consulted with the Most Holy [Pope] regarding the dispensation from the marriage in this case?"

[*Latin ed. p. 342*]

342. OF MARRIAGES. RESOLUTION. The Sacred Congregation of the Council, after discussing the matter on January 3, 1863, decided to respond as follows: Regarding the first and second points, it is to be considered that the payment of 600 Ducats as a dowry (in favor of Caia), and the bond issued by the same party to cover all damages, including the education of the children, should remove any impediment.

Furthermore, it is established:

I. He who seduces and defiles an honest girl, under a certain, serious, and deliberate promise of marriage, intending to unite her to himself in marriage, is bound (1).

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II. He who seduces and defiles an honest girl, either without an express promise of marriage, or with a vague promise of marriage, is bound to either unite her to himself in marriage, or to provide her with a suitable dowry, with all damages being compensated (2).

(1) See also what we said on page 78, in the section on doctrine.

(2) Christopher Cosci, a very learned jurist in matters of marriage, dealing with this question in his work "De sponsalibus filiorum familias," volume 7, number 38 and following, interprets the first chapter of "De adult. et stup." in which it is stated: "If anyone seduces a virgin who is not yet betrothed, and lies with her, he shall endow her and take her as his wife." And then he adds: "However," the same Holy Church continues, "either mitigating the rigor, or explaining 'how that command should be renewed,' has ordered that the rapist either 'take the virgin,' or 'send her to a monastery to perform the penance for the crime committed.'" Chapter 2 of "De adult. et stup." Furthermore, "the consensus of interpreters, and the custom received by all, is that even if an older law is explained, or a new law is established, 'namely, that he who seduces or violates a virgin, provided that a promise of marriage has not been made, is bound to either take her as his wife, or to endow her;'"... regarding this alternative, theologians also agree... and it is accepted in all tribunals, both ecclesiastical and secular, in our Italy... and similarly in Germany, in the lands of the Electorate of Saxony... in France... in Spain... and it has been masterfully explained by the Rota of Turin in Marriage, January 24, 1590, in the case of Penny.

"However, we cannot generally apply this rule in all cases, since some judges believe that it can be adapted to any case; indeed, the option of the rapist ceases if the seduced woman does not wish to marry him, or if she cannot, for some impediment, because then he is bound to endow her (although in these cases, it may be doubted in practice whether this obligation to endow truly exists). Also, when the rapist is unable to endow her, he must take her in marriage, and if she does not wish to marry him, and the rapist is unable to provide her with a suitable dowry, instead of the dowry, the penalty of flogging, or other penalties, are imposed, as stated in the "Mascat. Instit. canonie," title "De stupr.," paragraph 2, number 12. Finally, before condemning the defiler, as we have said, it must be examined whether the intercourse was forced under the promise of a future marriage, whether the woman was seduced, or whether she seduced, or whether...

[*Latin ed. p. 343*]

OF BETROTHALS. 343 III. A betrothal is considered to exist when the seducer and deflowerer simply declares to the girl his intention of entering into marriage with her in the future. IV. However, the betrothal of the seducer, given the very serious nature of the matter, should never be presumed to be deliberate and firm; rather, it must be conclusively proven to be such. V. In the present case, it has been sufficiently proven that an hon-

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est girl was seduced and deflowered under a certain promise of marriage. "Whether she was honest," and "what is the condition" of the deflowerer and the deflowered one. If, indeed, the act was qualified as rape, that is, if a promise of marriage was made, to distinguish it from simple rape, we must consider the deflowerer precisely and absolutely "obligated to marry the deflowered one," as Lessius teaches in *De Iustis...*, provided that the aforementioned promise remains proven, and the woman's honesty. To justify such a promise, we do not admit any kind of proof; for this purpose, rigorous proof is required, not through presumptions and conjectures, but through the confession of the rapist, or through witnesses and documents that fully corroborate the given faith of marriage, from which the rapist appears legitimately convicted... (the author cites authoritative sources) when it is a matter in which a man, having almost lost his freedom, is reduced to a state of quasi-servitude of conjugal life... It is not enough to prove that the rapist said that he wanted to enter into marriage with the deflowered woman; indeed, these words are rather considered to be uttered out of jest, and for the sake of love, rather than to obligate himself in his mind... and they can only signify a certain inclination towards marriage in the future, or a bare and simple predetermination, and a disposition of the will of the deflowerer to marry the deflowered woman, from which nothing certain and deliberately considered can be established, so that a betrothal can be said to be perfected, and consequently, in virtue of such consent, the promisor can be compelled to fulfill the promise, under the threat of imprisonment, or excommunication, or other penalties. For in order for coercion to proceed, the consent in betrothals must be similar to that required in an actual marriage contract. For if the promisor cannot be compelled to enter into marriage, except in virtue of a consent already given in previous betrothals, it necessarily follows that such consent must be of the same kind and nature as that which is required in actually contracting marriage in the sight of the Church, for its validity, namely, entirely free, certain, and deliberate. This excellent doctrine has been presented, because it is found to be very consistent with the practice of the Holy Congregation of the Council; and if anyone pays attention to this wise doctrine, they will not so easily err in judging the existence of betrothals, as often happens. Often, the Holy Congregation C. overturns such sentences, for two reasons: either because the consent is not demonstrated to be firm and deliberate, or because it is not established that a promise has been made, especially on the part of the woman; with the exception of the case of deception, and the defilement of an honest girl, under a firm promise of marriage, which, being made through deception, is equivalent to a renewed promise.

[*Latin ed. p. 344*]

344. OF MARRIAGE CONTRACTS. VI. However, it does not seem sufficiently proven that such a promise was firm and definite. VII. Therefore,

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there was room for an option, by which Titus was bound, either to take Caius as his wife, or to endow her, with all damages being restored. VIII. Furthermore, you will understand why it was necessary to consult with the Holy Congregation regarding the dispensation from the marriage contract, because there was not sufficient proof of the existence of the marriage contract.

SACRED PROPERTY. On March 2, 1801. Summary of petitions. A cleric, A., promoted to the sacred orders with the title of "Participation" of a certain benefice, petitioned his Curia, so that he might be allowed to substitute a sacred property for said Participation, from which he wished to renounce: this property consisted of the revenue of 30 ducats, inscribed in the public debt of Naples, and 14 ducats pertaining to the chaplaincy of a lay endowment of the family of the Orator, of which 6 ducats were inscribed in the code of public debt, and 8 ducats came from certain Uzes. Moreover, these revenues exceeded those which the Orator received from the Participation, and were sufficient for the sacred property taxes which were paid in the Kingdom of Naples. However, the Curia refused to accept this property, except for that portion which came from the Uzes, considering that a sacred property could not be constituted over Uzes in that kingdom. Therefore, the Orator appealed to the Sacred Congregation, so that his petition might be granted. The Ordinary, when questioned among other things, responded: "Previously, Uzes in the Kingdom of Naples were considered as immovable property, but since the year 1809, when the French civil code was introduced, Uzes have been considered as movable property, and are regarded as such by the civil laws currently in force, which succeeded that French code in the year 1819: in the Convention with the Holy See in 1818, article 22 prescribes that properties recently established as funds must be..."

[*Latin ed. p. 345*]

SACRED PROPERTY. 345 The Advocate: "He maintained that this matter should be judged not according to the sanctions of civil law, but according to the decree of the Holy Canons. Indeed, it is an established principle, and commonly accepted in practice, that nothing prevents sacred property from being established upon censuses, provided that certain precautions are observed, as prescribed by the Holy Congregation of the Council in *Nullius*, June 21, 1629, Decree Book 14, page 109 verso. In this resolution, the following is stated: 'It is asked whether patrimonies can be established for clerics destined for the Holy Orders upon perpetual annual censuses.' The Holy Congregation of the Council responded: 'It is possible to establish patrimonies upon perpetual censuses attached to real property, and with legitimate precautions, and provided that the property of the census is of such a sum that, in the case of restitution and conversion into stable goods, or in non-vacant mountain places, the annual income is sufficient

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for the decent sustenance (alimento) of the promoted [clergy]; and also that, in such a case of restitution, the debtors of the censuses are obliged to deposit the sum with the same sacred institution, or with a person of faith and suitable capacity, for the purpose of investing it as quickly as possible, in other censuses of the same quality, or in stable goods, or in non-vacant mountain places, during the time that this patrimony holds title, except for what is prescribed by the Holy Canons and the Holy Council of Trent, for the purpose of alienating [the property]; and they are obliged to make this investment under penalty of suspension, by the very fact [of failing to do so]. If, however, Ordinaries should establish patrimonies upon such censuses, other than for the purpose of ordinations, they must ensure that those establishing the patrimony validly promise, in accordance with the law, that in the case of redemption, as previously expressed, they will provide for the sufficient sustenance of the ordinands." In the present case, the Advocate added, the censuses in question pertain to a perpetual chapel, so there is no danger of them failing. He stated that, in the Neapolitan jurisdiction, by a royal decree of May 18, 1857, it was stipulated that debtors of censuses must agree to a condition of reinvestment in the case of restitution, under penalty of repeated payment. Furthermore, the difficulties noted by the Ordinary did not exist. For the censuses, whether held under ancient or current laws of the kingdom, are considered as goods, and not in a strict or proprietary sense.

[*Latin ed. p. 346*]

346 CONCERNING the temporal goods, whether movable or immovable, but rather as the revenue of immovable property, or as assets similar to immovable property. Furthermore, the Orator observed that the sanction of the Convention of the year 1818, in which it was stipulated that sacred endowments should be established upon lands, was not correctly presented: firstly, because endowments are also established upon revenues; and secondly, because under the appellation of "lands," in a broad sense, falls also any revenue of any kind, provided it be perpetual, at least by its nature. It was merely pointed out, in accordance with the proceedings of the aforementioned decree of the Sacred Congregation of Councils, that all Doctors could agree that a sacred endowment could be established upon revenues; and the example of Benedict XIV was cited, who, while governing the Archiepiscopal Church of Bologna, permitted that a sacred endowment be established upon revenues, as is stated in *Institutiones ecclesiasticæ*, 20, number 12, thus: "If a land is held, in some revenue, or in perpetual revenues, we will readily grant the establishment of an endowment, provided that it be done within the limits prescribed by St. Pius V; for then the revenue is counted among stable assets. However, it must be taken care that, if the debtors wish to redeem these revenues, the sum be deposited with some honest and wealthy man of integrity, so

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that it may be converted into other revenues, or invested in productive and certain lands, which will be held for the same purpose. Furthermore, the Ordinary, under pain of suspension, must take care that such a deposit be diligently managed, since all these things are entirely in accordance with the decrees of the Holy Congregations, as Monacellius states in volume 2, title 13, page 74, number 17, and 21, edition of Rome, in the year 1706, and declares most clearly."

RESPONSE. — The Sacred Congregation of Councils, in this matter, after examining the aforementioned petitions, decided on March 2, 1861, to respond as follows: Provided that the revenues have been established in accordance with the Constitution of St. Pius V (I), and that the hypothecary inscription is assumed and maintained upon suitable stable assets, with the knowledge of the Orator. (4) This Constitution begins: "Cumonus," issued on February 14, 1569.

[*Latin ed. p. 347*]

BENEDICTION FOR A WOMAN AFTER CHILDBIRTH. June 18, 1859. Summary of prayers. From a report submitted to the Sacred Congregation of the Council by Bishop B. to the church A, the following question was raised: "The Roman Ritual says nothing about whether women who have given birth to an illegitimate child can receive the blessing in the Sacred Order of Matrimony after childbirth. In many dioceses of Germany, the ancient custom prevails of granting this blessing only to married women, or to widows after childbirth, known as 'posthumous childbirth.' It is asked whether this custom is in conformity with the Ritual, and, if not, whether it can be tolerated so that the aforementioned blessing is denied to women who have given birth to an illegitimate child." The entire question, therefore, rests on whether, according to the Roman Ritual, the blessing can be denied to women after an illegitimate birth. In other words, whether these women have the right to receive this blessing.

REASONS FOR DENYING THIS BLESSING. — It was observed that there is no mention of this in the Roman Ritual, nor, as far as is known, any decree on this matter in the resolutions of the Sacred Congregation of Rites concerning the blessing of these women (1). However, if one considers the origin from which this kind of ceremony arose, and if other arguments are presented, it seemed that this blessing should be denied. Indeed, that ancient rite, as prescribed in Leviticus, chapter XII, concerned only legitimate wives who had borne children within the marital bond. (1) Only three decrees were found in the collection by Gardellini, which, however, refer to the right of the parish priest to bless women after a legitimate birth. In Thelesina, on February 8, 1631, when the canons claimed this right, the response from the Sacred Congregation of Rites was: "But to what blessing after childbirth? This is a parochial duty, belonging to the parish priest himself." But again, on March 22, 1631, the canons of the Thelesina cathedral

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also declared: "It is permissible for them to bless women after childbirth, since this blessing is not of precept, but for the good of the people, and therefore can be given by any priest." And the Sacred Congregation again maintained in its decrees that parochial duties belong exclusively to the proper parish priest. The same was decreed in the decree of Urbis et Orbis on December 10, 1703, in response to question VI.

[*Latin ed. p. 348*]

The provided text does not contain the quotation 2Chr 10:19. Therefore, no changes are made.

348. THE BLESSING OF A WOMAN AFTER CHILDBIRTH. But with regard to the Roman Ritual, it should be noted that this rite is not prescribed, but merely a religious custom, and is included in the Ritual after the sacrament of marriage, as if it were a related matter; it is not, however, included under the heading of blessings. Therefore, it seems to concern only those women who have borne children from a legitimate marriage. The Catalan, in his Commentary on the Roman Ritual, title 7 on the Sacraments, chapter 3 on blessings, paragraph 17, states: "It remains to be added that the blessing after childbirth is granted only to that woman who has borne a child from marriage, and not to her who has given birth from fornication, and especially from adultery, or from any other unlawful union." Thus, the common doctors teach, and this is also stated in the decrees of synods and in the Rituals. And indeed, this is the opinion of the Pastoral documents of Mechlin, Bruges, and the Ritual of Liège. These authorities are further supported by Baruffaldi in his Commentary on the Roman Ritual, title 43, paragraph 18, on the blessing of women after childbirth. Indeed, the modern author De Herdt, in his work entitled *S. Liturgiae praxis iuxta Rit. Rom.* published in Louvain in 1852, in the section on the introduction of women into the church after childbirth, paragraph 2, states expressly: "Only women who have given birth from a legitimate marriage have the right to this blessing; therefore, those who have manifestly given birth from adultery or fornication should not be admitted to it, but rather, public penance should be imposed upon them." Therefore, it was concluded that such a judgment seemed to be in conformity with the Roman Ritual, although this does not mention the granting of this blessing to these women after childbirth; and indeed, it is fitting. For what should be most carefully concealed should not, without some scandal, be made manifest.

WHAT FAVORED THE GRANTING OF THE BLESSING. — On the other hand, it was considered that the words of the Roman Ritual are general and do not make any distinction between a legitimate and an illegitimate birth, whatever may be the occasion that the Ritual took to speak of this blessing. Indeed, if the reason for this kind of rite is carefully considered, namely, to purify women upon entering the church, then it would seem that this rite should be applied with greater reason to women

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after an illegitimate birth. And if the reason for not granting this blessing is to avoid scandal, then...

[*Latin ed. p. 349*]

BENEDICTION AFTER CHILDbirth. 349 It is not considered that, after a manifestly illegitimate birth, a restriction should be placed on granting the blessing to those women who have succumbed to hidden, and especially to those deceived by human frailty. Pignatellius, in volume 5, consult. 76, number 14, seems to suggest this distinction between hidden and manifest fornication, stating: "In ultramontane regions, especially in all of Belgium, it is customary that women who have given birth out of concubinage or manifest fornication are purified only by the Archpriest or Deans, so that on the occasion of this purification, they may receive information about the father of the child, which is transmitted to the Vicar of the Bishop, so that legal proceedings may be taken against the fornicator." Some modern French writers also hint at this distinction, although they do not express themselves clearly; nor does the esteemed De Herdt, who in the aforementioned passage, page 6, number 15, section 1, limits this restriction to births manifestly resulting from adultery, meaning that wives have the right to request this blessing whenever there has been a hidden adultery.

RESPONSE. The Sacred Congregation of the Council discussed this question through a summary of prayers on June 18, 1859, and concluded: "Only women who have given birth from a legitimate marriage have the right to receive the blessing after childbirth." From this decree of the Sacred Congregation, it does not follow that priests are prohibited from bestowing this blessing upon the women in question. It is inferred only that these women cannot legally demand this blessing, according to the question that was posed.

[*Latin ed. p. 350*]

350. OF IRREGULARITIES. June 27, 1837. Summary of cases. Sempronius desired to enter the ecclesiastical state. However, the Ordinary considered that a defect of birth hindered the fulfillment of his wishes. Although Sempronius appeared to have been legitimately born, according to both the parish records and the civil status, his parents nevertheless confessed, and public opinion reported, that he was illegitimate, born of a free father and a married mother. Therefore, in order that he might be admitted to the clerical state without danger to his conscience and without the risk of scandal, the Ordinary, after hearing the case, requested a dispensation for him from the irregularity, due to the aforementioned defect of birth, considering the excellent character of the young man, his proven morals, and his knowledge; and he considered his advancement to be very useful for the good of the Church, given the small and inadequate number of priests present in that city.

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THINGS WHICH WERE OBSERVED EX OFFICIO AGAINST THE IRREGULARITY. — Before the question of the dispensation was considered, it was deemed prudent first to inquire whether the irregularity truly existed. Furthermore, the illegitimate origin of Sempronius did not seem sufficiently proven; indeed, public documents vindicated his legitimate birth, as did the law. For, with regard to the favor of the law, according to the teaching of the jurist Paulus in L. 2 ff. De in ins, "Pater est quem nuptiae demonstrant," and according to Ulpianus in L. 6 ff. De iis qui sui, who defines a son as "one who is born of a man and his wife," Sempronius was to be presumed legitimate, since he was born of a mother who was constantly in a legitimate marriage. This presumption of legitimate paternity must hold until any contrary proof is presented, except for cases of physical impossibility; that is, unless it is clearly proven that a woman could not have conceived from her husband due to a physical obstacle, such as absence, impotence, infirmity, and the like, as is evident from the argument of the law cited. It is the common opinion of Doctors and Tribunals: as, among other things, is seen in the most celebrated decision of the Sacred Roman Rota concerning the first doubt of January 20, and in the confirmatory decision of May 5, 1845, before D'Avella.

[*Latin ed. p. 351*]

IRREGULARITIES. 351 In that decision, citing numerous alleged rights, it was stated that the confession of the mother, and the presumed paternity, should not be considered, to the detriment of the legitimate filiation of the child. It was, moreover, observed that even less attention should be given to public opinion and reputation, which had clearly arisen from the manifestation of the parents, as the Ordinary himself pointed out: "Without such manifestation, the illegitimacy could not be known if it were the result of adultery." And if any reason for doubt still remained, the doctrine was cited, which Saint Alphonsus de Liguori defends in *Theologia Moralis*, Book 1, chapter 7, paragraph 347, which teaches that, unless the irregularity arises from an unjust homicide, no one should be considered irregular. And the danger of scandal was noted, if the Holy Congregation, in its judgment, were to declare that Sempronius had been legitimately fathered, and that he did not require a dispensation.

AS TO WHAT FAVORED THE DISPENSATION. — Since the Holy Congregation had decided against granting the dispensation, the reasons presented by the Ordinary were added, namely, the evident benefit to the Church and the good morals of Sempronius. Regarding the latter reason, it was stated that this is the principal cause by which this particular irregularity is established, as Pyrrhus Corradus states in *Practica de Dispensationibus*, Book 1, chapter 3, paragraph 1: "The principal reason [for denying a dispensation] is that these [illegitimate children] are, more than others, 'very often imitators of paternal incontinence, and are badly be-

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haved.'" Similarly, Fagnanus and others.

WHAT OPPOSED THE DISPENSATION. — Nevertheless, there seemed to be a significant obstacle to the dispensation, namely, the danger of public scandal and the dignity of the sacred orders; especially because the dispensation was to be granted to one who had been born of parents between whom a valid marriage could not exist. Saint Thomas, in his excellent manner, explains this in the *Summa Theologica*, 4th part, distinction 25, question 2, article 3: "Those who are ordained are constituted in a certain dignity above others. Therefore, a certain clarity is required of them, not out of necessity of the sacrament, but out of necessity of the precept, namely, that they should be of good reputation, adorned with good morals, and not publicly penitent. And because a man's clarity is obscured by a vicious origin, therefore, those born of illegitimate unions are repelled from the reception of orders, unless they are dispensed with."

[*Latin ed. p. 352*]

S52 OF IRREGULARITIES. "And the dispensation is all the more difficult, the more shameful the origin of the irregularity." And examples of such dispensations, especially concerning illegitimate births, whose origin is, as far as is known, the most shameful, have not, at least in Italy, been encountered. RESPONSE. – The Sacred Congregation of the Council, having considered this question through summary petitions presented on June 27, 1857, decided to respond: it does not require [a dispensation]. From this, you will understand how much force the principle of the jurist Paul carries: "The father is he whom marriage demonstrates." Indeed, so that, except for evident physical proof, no other proof should be considered. FROM S, THE CONGREGATION OF BISHOPS AND REGULARS CONCERNING THE RUPTURE OF A TESTAMENT OR THE CHANGE OF WILL. On the 16th of September, 1864. Summary of the case. A certain woman named Rosa made a will of her own goods, which she freely possessed, and duly consigned it to a public Notary on August 28, 1840, to be kept. The disposition of the will was as follows: that she would leave a legacy of twenty-five scudi to each of her two nephews from her brother, and then another legacy of one hundred and fifty scudi to her husband, to whom she had been married. Regarding the rest of the goods, which amounted to the sum of two hundred and one thousand scudi (since Rosa had no offspring), she wrote that certain Clerical Regulars should be the heirs, with the obligation of celebrating fifteen masses each month for the suffrage of her soul in the church of those same heirs. Finally, for the execution of her will, she appointed the aforementioned Moderator of the heirs as her procurator or testamentary executor.

[*Latin ed. p. 353*]

ON THE VALIDITY OF A TESTAMENT OR WILL. 353 After the testa-

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ment of Rosa had been drawn up and delivered, more than seven years elapsed, during which time her estate had increased considerably. Finally, in the month of August of the year 1861, she was suddenly struck by an illness, which at first did not appear serious, but which, unexpectedly worsening, took Rosa's life within a few days. The Superior of the Religious Order, aware of the situation of the heirs, and considering that it was not permissible for a portion of the testament to be valid, while another portion was invalid, he believed that all of Rosa's heirs, including the Religious, who had been named in the testament, were entitled to the entire inheritance, together with the increase that had occurred after the testament was drawn up. Therefore, in accordance with the law, and with absolute certainty, he ordered an inventory of all of Rosa's assets, from which it was determined that the total inheritance, after deducting all expenses, amounted to 2951 scudi. He did not hesitate to claim possession of the inheritance left by Rosa in the name of his Congregation.

However, not long after, two nieces of the deceased, who were the daughters of her brother, came forward. We had previously seen that these nieces had been named in the testament, each to receive twenty-five scudi. These women appealed to the Sacred Congregation and the Royal Court, arguing that the testament drawn up by Rosa, her aunt, in the year 1840, was invalid, and therefore should not be considered valid, and that a legitimate succession should take place in their favor, since no other heir was closer to the deceased. Furthermore, they argued that the testament was invalid because they could present three witnesses who would testify that Rosa had intended to change her will, and that more than once, and even several times, she had expressed this intention over a period of ten years since the original testament was drawn up. The first witness testified that she had heard Rosa say that she intended to change the testament because she was troubled by her nephews, and that she wanted to make the change for the benefit of her nephews. The second witness (who was a woman) stated that she had heard Rosa say that she wanted to renew the testament in order to better provide for the needs of her nephews. The third and final witness testified that he had acted as Rosa's notary, gratuitously, and that he had done so with the promise made by her that she would reform the testament, and that he had generously compensated him for his services. The lawyers concluded that, even if it might seem otherwise to the Sacred Congregation, and even if there might be some doubt as to whether the testament should truly be declared invalid, a canonical cause should be initiated in this case, as in the case in *Acta Canonica*, vol. 1, section VI, 23.

[*Latin ed. p. 354*]

354 CONCERNING THE INVALIDATION OF A TESTAMENT OR THE ALTERATION OF A WILL. The matter was complicated by three factors: the poverty of the parties involved, the close blood relationship between

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the testator and the witness, and the fact that the Apostolic See, in order to exercise the utmost caution, was considering altering the will of the Testatrix and granting the inheritance to herself, while maintaining the obligation of masses. When the Ordinary was questioned about these matters, he expressed his opinion in favor of the petitioners: but the Regular Clerics, or their Superior, vehemently opposed both articles, namely, the invalidation of the asserted testament and the alteration of the will. Therefore, with a defender appointed by each party, the cause was submitted to the judgment of the Most Reverend Fathers of the Sacred Congregation of Bishops and Regulars, with two doubts, which are mentioned at the end. A concise summary of the arguments. WHAT THE DEFENDER OF THE REGULAR CLERICS PRESENTED AGAINST THE INVALIDATION OF THE TESTAMENT. — The Defender of the Regular Clerics stated: "It is well known that the law of Emperor Justinian, beginning with the words 'We decree' in Title 27 of the Digest on Testaments, establishes that testaments become invalid after ten years, if it is proven by three suitable witnesses that the testator has changed their will, or if the testator, in official documents, has properly declared a change in their will. However," he continued, "although the passage of ten years cannot be denied, neither is there evidence of a change in the testator's will in official documents; nor can the testimony of the witnesses be considered of the kind that is necessarily required for the purpose in question. For, in the first place, the witnesses must, according to the clear sanction of the law, be suitable, and this suitability consists in the fact that they must be free from any exception; that they must not be biased or in conflict with each other in any way; that they must have been questioned; and that they must not be subject to any other defects. Moreover," the Defender further argued, citing several reasons which we consider it superfluous to detail here, "this kind of suitability is entirely lacking in the witnesses. Furthermore, even if the exceptions that have been proven to apply to them were not valid, their testimony would not be considered to have completely and definitively established a change in the will, but perhaps only to have indicated a will or intention." However, for a testament to be truly declared invalid due to a change in the will, it must be...

[*Latin ed. p. 355*]

ABOVE THE RUPTURE OF THE TESTAMENT OR THE DECLARATION OF THE WILL. 355 According to the aforementioned law, it must be established by at least three suitable witnesses that the testator himself declared that he did not wish to abide by the prior testament, or, in other words, that he revealed a will contrary to the aforementioned testament (1). This is all the more to be admitted if one considers that the case in question, concerning the revocation of a testament, is similar to the case of the revocation of a prior testament, which was made by a subsequent

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testament. However, in this second case, in order for the prior testament to be declared revoked and rescinded, it is not sufficient if only the subsequent testament has been begun; rather, it is absolutely necessary that it be completed and perfected in all its parts; otherwise, the first, and not the second, will remain in force. Therefore, the same must be said in the case we are discussing, in which Rosa did not, in fact, and formally, change her will, but merely declared (as far as the testimony of the witnesses is concerned) that she intended to change what she had established in the testament of the year 1840.

WHAT THE DEFENDER ALLEGED AGAINST THE CHANGE OF WILL. The Defender proclaimed that the wills of the deceased must be guarded piously and religiously, according to the prescriptions of the Sacred Canons and, especially, of the Council of Trent. Although the Apostolic See does not deny the faculty of changing the wills of testators, it nevertheless maintained that this should only be done for a just and reasonable cause. Indeed, poverty, which they asserted they were suffering, was primarily presented to the Sacred Congregation; nevertheless, it was inferred that this was not true, or was at least exaggerated, because they had appointed an Advocate to defend their case, who could not have elucidated and published the matter of law and fact without considerable expense. Nor was consanguinity presented with better counsel by them, which was, in truth, not so close that they should be forbidden, without violating the laws, from excluding Rosa; especially if one were to consider the most just causes derived from the badness of their lives, for which they deserved, rather than for their own benefit, to have consulted the salvation of their souls. Although they had not entirely neglected them, it was clear that each of them had generously honored them with a legacy of twenty-five scudi.

(1) See Appendix XI, page 378.

[*Latin ed. p. 356*]

s56 CONCERNING THE INVALIDATION OF A TESTAMENT OR THE CHANGE OF WILL. WHAT THE DEFENDER OF THE PLAINTIFF WOULD ARGUE TO ESTABLISH THE INVALIDATION OF A TESTAMENT. Alleging the authority of Cuiacius, Donellus, Voetius, and other interpreters of civil law, the aforementioned defender maintained that a bare will, without any solemnity, is sufficient to allow someone to invalidate a testament made ten years prior, provided that such revocation is confirmed by the testimony of three witnesses. From this, he first argued that the question of whether the will had been brought into effect was irrelevant; for as soon as it is demonstrated that the testator no longer adheres to the will in which he was when he made the previous testament, it follows that the will, as changed, must be considered, and that he is no longer bound by it. However, from the preceding account of the

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declarations of three witnesses, the defender believed that it was clear that Rosa, having set aside her previous will, intended to dispose of her affairs differently. This revocation, he continued, deserved even greater consideration, because the Testatrix had a just and indeed necessary reason to invalidate her previous will. For although perhaps something had occurred in the early days, for which she may have been inclined to favor her nephews, nevertheless, in the subsequent time, she had shown kindness to them; she had compassionately accepted the misfortunes that afflicted them, and had resolved to alleviate and improve their most grievous condition. Furthermore, he did not maintain that, in order to admit the invalidation of the will due to the passage of time and a change of will, it was necessary for the change of will to be solemnly celebrated, as happens when a previous will is revoked by a subsequent one; hence, the former remains valid until the validity of the second is established. Although Rosa did not proceed to a formal act of changing her will, nevertheless, it is sufficient if she no longer adhered to the will in which she had bequeathed her inheritance to the Regular Clergy, which was clearly evident from the uniform testimony of three witnesses.

WHAT THE DEFENDER WOULD ALLEGE TO OBTAIN THE CHANGE OF WILL. The foundation upon which the Pontiff relies in exercising the power to legally change the wills of the deceased is nothing other than the presumed will of those same deceased, for if they were living and involved in the circumstances in question, they would likely act according to their own judgment.

[*Latin ed. p. 357*]

ABOVE, REGARDING THE VALIDITY OF THE TESTAMENT OR THE CHANGE OF WILL. 357. The Supreme Pontiff, with his wisdom and authority, has decided this matter. However, in this controversy, not only does the presumption of the will of Rose arise, which, indeed, if she had not been seized by a sudden illness and had passed away from life, would surely have, out of pity for the most grievous condition of her nephews, provided for them more generously and abundantly, but also the truth is added; for it appears from the declaration of three witnesses, who are mentioned above, that she, regretting the previous will, manifested her intention to revoke those very documents and to leave her goods to her nephews. Therefore, if those witnesses, who perhaps do not seem sufficient to uphold the validity of the will, are deemed to have said enough to support this truth, it is clear that Rose, for the benefit of her nephews, had in mind the intention of changing her will. To this, we must add that the Supreme Pontiff had a canonical reason for proceeding with this act of change: there is the closest of kinship between the Oratorians and the testatrix, and furthermore, there is the most serious poverty in which these men live; these two circumstances commonly lead the Supreme Pontiff to

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interpret the will of the testator and to change the testaments in favor of the poor relatives. Moreover, it must not be overlooked that Rose named Regular Clerics as heirs in a certain matter, namely, in the sum of one thousand two hundred scudi, which is sufficient to fulfill the burden of the masses that she imposed. If, moreover, they have acquired an additional sum from the augmentations that were added to Rose's estate after the will was made, this is only due to the disposition of the law, which dictates that no one should depart leaving a portion of their estate bequeathed, and a portion intestate; and certainly not (when, as is the case, the truth is considered) due to the precise intention of the testatrix, who, while making her will, could not have foreseen these additions to the estate, or at least did not truly foresee them. Given these circumstances, it is likely (as the defender himself concluded) that she intended to benefit her own nephews rather than outsiders, especially since the Religious are a moral body. Therefore, the reason grows stronger for the Supreme Pontiff to exercise his authority for the benefit of the Oratorians, and even more so, because these men spontaneously offered to relinquish a pious endowment for masses, both at *summa* and at *tectum*.

[*Latin ed. p. 358*]

358 CONCERNING THE RUPTURE OF A TESTAMENT AND THE CHANGE OF WILL. Doubts. "Whether it is established that a testament can be broken in this case." "And to what extent." "Whether and how there is room for its alteration in this case." The Most Holy Congregation of Bishops and Regulars, after deliberation, responded on September 16, 1864. To the first question: Negatively. To the second: Affirmatively, provided that the shields, amounting to five hundred for each of the two Orators, are assigned, including the twenty-five shield-bearers mentioned in the aforementioned sum, and with the consent of the Most Holy College. FROM THIS, YOU CAN GATHER: I. That a testament properly executed can, after the lapse of ten years, be broken by the simple manifestation of the Testator's will before three witnesses. II. That such a manifestation was not, in the present case, perfectly executed. For, from the witnesses presented, after excluding all exceptions, it could be gathered that the Testatrix was preparing to renew the testament in favor of her nephews. III. That with this simple, imperfect will, the testament is not broken (1). IV. However, if other circumstances concur, as in this case, a sufficient reason can be presented to demonstrate that the testament, made for pious purposes, can be altered by the Most Holy Pontiff. DOUBTS CONCERNING HOLY ORDINATION AND OTHER MATTERS. On May 6, 1864. A summary of the facts. Bishop A. presented the following to the Most Holy Congregation of Bishops and Regulars: "In my diocese there exists a house of the Congregation of secular priests, B; in its statutes, approved by the Holy See, the following are found: 'Each house shall

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have its Superior; and each house of the Congregation shall be subject to the immediate jurisdiction of its own Ordinary, but the authority of the Superiors over their subordinates shall remain firm.' Furthermore (1) See Appendix XL, page 378.

[*Latin ed. p. 359*]

DOUBTS CONCERNING HOLY ORDERS AND OTHER MATTERS. 359 "It is prescribed that the Superior, in addition to being Provincial, shall assign a dwelling to each [member], and may transfer him from one dwelling to another (within the limits of the Province); with this reservation, however, that all priests who are received into the same Congregation must be entirely subject to the jurisdiction of the Ordinaries." "Recently, the Superiors of the aforementioned Institute requested that I confer holy orders upon some of their subjects, some of whom do not belong to my Province, or have not yet received the tonsure, or have received it along with other orders from different Bishops. A doubt has arisen as to whether I can initiate them with holy orders; the reason for doubting is that there is no title in this case by which the Bishop becomes properly authorized to confer holy orders, etc." On this occasion, the aforementioned Bishop also proposed resolving other doubts, which, according to custom, had been prepared by his office, as can be found at the end. Before the Holy Congregation resolved the doubts, it referred the matter to another Ordinary, C., within whose diocese the principal house of the Institute is located, to hear the Superior and specifically to inquire whether the Institute enjoys any privileges, direct or indirect, namely, through communication with other Institutes, and also that Ordinary C. himself should express his opinion. The Superior of the Institute stated that the Institute does not enjoy any special privileges, but nevertheless, with regard to the two previous doubts, he was of the opinion that the students of the Institute can receive holy orders from any Ordinary within whose diocese they actually reside, especially because, according to the approved Constitutions by Apostolic authority, the students become subjects of that Ordinary within whose diocese the house is located, and are exempted from the jurisdiction of the Ordinary by being transferred to another diocese by order of the Superior of the Institute. Therefore, with the jurisdiction ceasing, the Bishop, whether of *originis* [Orense] or of that who conferred the previous orders, can receive any orders from the Bishop within whose diocese the students are actually located, since they are subject to his authority. Regarding the third doubt, he stated that, according to the Constitutions, the aforementioned Institute, independently of the local Ordinary, may transfer any student from one diocese to another, provided that urbanity is observed; because the obedience which is promised to the Ordinary at the time of the actual conferral of holy orders is limited by the

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very Constitutions approved by the Institute.

[*Latin ed. p. 360*]

360 DOUBTS CONCERNING HOLY ORDERS, AND OTHER MATTERS. The final doubt concerned those students who are dismissed from the Institute, and whether they thereby become subject to the Ordinary under whose jurisdiction they were before entering the Institute. Indeed, although it appears that all those who are received into the Institute are, according to the testimonial letters which the Ordinaries are obliged to grant, withdrawn from the authority of their own Ordinary, according to the Decree of the ROMAN PONTIFFS of January 25, 1848 (1), nevertheless, these letters are not properly letters of excorporation, but are letters in which the Ordinary must testify concerning the birth, age, morals, life, reputation, condition, education, knowledge, and similar matters. On this occasion, it is fitting to add the following declarations issued by the Sacred Congregation concerning the status of Regular Canons, regarding the aforementioned Decree of the ROMAN PONTIFFS: 1. "Are the testimonials given by Ordinaries through private letters sufficient?" Answer: Affirmative. 2. "Are testimonials sufficient, in which the Ordinaries do not testify in detail about all those things which are prescribed in the Decree of the ROMAN PONTIFFS, but merely refer in general to the qualities of the Candidate?" Answer: Affirmative, but the Regular Superiors must observe other legally required procedures for ascertaining the individual qualities of the Candidates. 3. "What is to be done if the Ordinary replies that he does not recognize the Candidates?" Answer: The Candidates can be admitted to the habit and novitiate, if the Ordinary or Superior expressly replies that he is unable to inform himself about the qualities of the Candidates, because he does not recognize them, provided that the lack of testimonials is made up for by other accurate information and a trustworthy report, and that other legally required procedures are observed; and the Candidates, before being admitted to the habit, should remain in the community for at least three months, and there be carefully examined. 4. "Can the Superiors admit a Candidate to the habit of their Order, without the testimonials of the Ordinary, when this latter affirms that he cannot give them, because he is prohibited by civil authority?" Answer: The testimony of the Ordinary given even through private and secret letters is sufficient; but if the Ordinary, when requested by the Superior, refuses to give the testimonials for the reason explained above, the Candidate can be admitted, provided that the lack of testimonials is made up for by other accurate information and a trustworthy report. 5. "Can the Superiors admit to the habit soldiers, about whom the Ordinaries state that they are unable to inform themselves, because they have no representatives in GALLIA, nor can the parish priests have any knowledge of them?" Answer: Affirmative, if the Ordinary, when

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requested by the Superior, replies that he is unable to inform himself for the aforementioned reason, provided that the lack of testimonials is made up for by other accurate information and a trustworthy report, and that other legally required procedures are observed; and furthermore, the Candidates should remain in the community for at least three months before being admitted to the habit, and there be carefully examined. 6. "What is to be done when the Or-

[*Latin ed. p. 361*]

DOUBTS REGARDING HOLY ORDERS AND OTHER MATTERS. 361. Regarding entrance into the Institute, certain conditions are stipulated, by which the students are, for the time that they remain in the Institute, exempted from the jurisdiction of their proper Ordinary, by reason of their origin or domicile. Consequently, when this condition ceases, they are, by the same token, subject to the authority of that Ordinary. The Ordinary of C. observed that even his predecessors had established regulations for the students of the esteemed Institute, provided that the students presented certain testimonial letters from their own Ordinary for admission to the same Institute, and that these letters appear to take the place of letters of recommendation (1), as was also noted by the Superior of the Institute. Furthermore, "Ordinarys are unwilling to give testimonial letters," not for any other reason, "except because they oppose the entrance of the candidate into the religious life."

Response: Ordinarys, as prescribed in Article 2 of the decree *Romani Pontifices*, are not able to deny testimonial letters; however, if they refuse to grant them, recourse must be had to the Holy Congregation concerning the status of Regular Canons.

7. "In these orders, in which, besides converted laymen, there are also those who are born or are oblates, are testimonial letters required before the reception of the habit of the Donates and Oblates, or rather, of the Converts?"

Response: Before the reception of the habit of the Donates and Oblates.

8. "Is there any reception of the habit without these testimonial letters?"

Response: The reception of the habit is illicit, but not invalid; the testimonial letters must be obtained as soon as possible after the reception into the habit, otherwise the novices will not be able to be admitted to profession.

9. "Is the profession invalid if it is made without these testimonial letters?"

Response: It is not invalid, nor is it illicit.

(1) That is to say, letters of dismissal, or, as they are commonly called, letters of excardination. According to the variety of places, different names are sometimes given to these letters, as was learnedly observed in a consultation conducted in office, which we present in a synoptic discussion. What-

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ever the names may be, the letters refer to those that are properly called dismissal letters, which "express the permission so that another Bishop may promote that cleric (of whom we are speaking)." Testimonial letters "contain a testimony that the cleric to be promoted is worthy to receive such orders," as this difference between them can be known from the formulas contained in Moncellis, T. 1, title 4, forms 3 and 9. Testimonial letters are also called those "which are usually granted to commend a cleric who is leaving the diocese for his benefit." These are noted in the case of S. C. C.llcien. and Pient. Ord. 8 August 1733, §. nec vero. To this third type of letters can be referred the letters that are commonly called dismissal letters, for the use of a priest who leaves his own diocese in order to be admitted to celebrate Mass in another place.

The fourth type pertains to the letters that are commonly called letters of excardination.

[*Latin ed. p. 362*]

362. DOUBTS CONCERNING HOLY ORDERS, AND OTHER MATTERS. The opinion of the Ordinary of C. did not greatly differ from what the aforementioned Superior had observed. They disagreed only on the second doubt. A synodal discussion ensued. It was established, by general doctrine, that a Bishop could validly confer Holy Orders for four reasons: namely, by reason of origin, by reason of domicile, by reason of benefice, and by reason of familiarity. Furthermore, the Constitution of Innocent XII, beginning "Speculatores," dated November 1, 1694, was recalled, which, in such matters, must be kept most carefully in mind, and in which, among other things, it is decreed: "that it is not permitted to any Bishop, or to any Ordinary of any place... to promote to the clerical tonsure any external person, or one who is not legitimately subject to him by reason of origin or domicile..." Furthermore, "clergy who have already been legitimately promoted by their own Bishop to the same clerical tonsure, or even to lower orders, cannot be promoted to higher orders by another Bishop, by reason of any benefice whatsoever held in that diocese, unless, before receiving such promotions, they have obtained testimonial letters from the Bishop of their origin, as well as of their domicile, concerning their birth, age, morals, and life." However, it was observed that this law applies only to Regular clergy, who receive dismissal letters from their Superiors, so that they may receive the initial orders from the Bishop of the place, according to the Constitution of Benedict XIV, promulgated on February 25, 1747. But the Institute of secular priests, of which we are speaking, is deprived of the privileges of the Regulars; therefore, the Superiors seemed not to have the right to grant dismissal letters. Moreover, "in ecclesiastical discipline, such a cleric is exempted and removed from the jurisdiction of his Ordinary, and is assigned to another diocese as if subject to it." The fifth type pertains to testimonial letters, which, according to the decrees of

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the Holy Congregation concerning the status of Regulars, dated January 25, 1848, must be granted by the Ordinary to those who request to enter a Religious order, whether of solemn vows or of simple vows, which must testify concerning their birth, age, morals, life, reputation, condition, etc., as we have discussed in the preceding note. (Such decrees are referred to in the pamphlet entitled "Collection of Decrees of the Holy Congregation concerning the status of Regulars," collected by the Archbishop Philippens, secretary. Rome, 1862, from the printing press of the Rev. Apostolic.)

[*Latin ed. p. 363*]

DOUBTS CONCERNING THE ORDINATION AND OTHER MATTERS. 363. The granting of dismissal letters is considered a matter of great importance. This is confirmed by analogous precedents. Indeed, Abbots do not possess such power without a special privilege, according to what is stated by Benedict XIV in *de syn. dioec.* I. 2, chapter 11, number 15 and 16. The praised Pontiff cites the decree of the Council of Trent, session 23, chapter 10, in which it is stated: "Nor shall Abbots, and others who are exempt, or Colleges, or Chapters, or any other ecclesiastical bodies, grant dismissal letters to any secular clerics, so that they may be ordained by others, but the ordination of all these, with all due observances, shall pertain to the Bishops, within whose dioceses they are located." Having stated this decree, he adds: "No one has ever been able to bring forward an objection to the meaning of this decree, claiming that Abbots and other lower prelates of the first and second orders are included within its censure; but many prelates of the third order have claimed to be exempt from its severity, relying on this reason, namely, that their territory, within which they exercise quasi-episcopal jurisdiction, does not exist within the boundaries of any diocese, of which this decree seems to speak, but is entirely separate and distinct from every diocese; and therefore, although they abstain from conferring orders through themselves, according to the doctrine just stated, they nevertheless consider themselves free to grant dismissal letters to their secular subjects, for the purpose of receiving orders. But this was not the intention of the Holy Congregation of the Council, etc." Furthermore, even the Regular Orders, who enjoy the privilege of granting dismissal letters to their subjects, do not have the right to grant such dismissal letters, except for the purpose of conferring the tonsure and minor orders, according to the declaration of the Holy Congregation concerning the status of Regular Canons, of June 12, 1858, article VII, in which it is stated: "The Superiors of Regular Canons to whom this applies may grant such letters of dismissal, only for the purpose of the first tonsure and the minor orders, with due observance of the laws, and especially those prescribed by the Apostolic See concerning the ordinations of Regular Canons." From these passages, the conclusion spontaneously arises; for when it is a question of a difficult point of law

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concerning the granting of [dismissal letters], then...

[*Latin ed. p. 364*]

3G4 QUESTIONS CONCERNING S. ORDINATION AND OTHERS. It is not easily presumed, nor easily deduced, from any general privilege, such as that by which the Superiors of the Congregation of priests exercise authority over students; nor from the fact that Ordinaries also have authority over those students who happen to be found within their own diocese, whether letters of dismissal can be granted. Nevertheless, it was not overlooked that a similar question had been raised, concerning similar Institutions, namely in Lugdunum, regarding the App. stat. Sod. Cler. Par. Catech. s. Viatoris, on the 11th of September, 1838, under this question: "Whether the Rectors of various houses ought to be granted the faculty of giving letters of dismissal for their clerics." The Holy Congregation, however, deferred the resolution, with the usual clause; and it seems that this question was not subsequently raised. On the same day, the 21st of September, 1838, another question of this kind was proposed in the case of the Society of Missions, regarding the faculty of granting letters of dismissal, namely: "Whether the Superior General... ought to be granted the faculty of giving letters of dismissal." And the Holy Congregation responded: affirmatively, for students who are already enrolled in the Congregation, or who will be enrolled in the future, with the exception of those under the jurisdiction of the Ordinaries of Orense and Grado, and after they have already taken their vows: and they are reformed, so that it is understood that the Constitution of Benedict XIV is observed. From this, it follows (1). Regarding some observations concerning the third question, the discussion then proceeded to the fourth question, and similarly, analogous declarations showed that students who leave the Institute by dismissal, dispensation, etc., again fall under the authority of the prior Ordinary; especially if the Holy Congregation had resolved the previous questions in such a way that letters of dismissal from the Bishop of Orense, or Grado, would be necessary for the ordination of students. Analogous declarations are of this nature. The Archbishop of Mexico, among other questions, proposed: "If novices, after having taken simple vows, are dismissed, or..." (1) This Constitution prohibits Ordinaries from preventing their clerics from entering a religious order. However, although it speaks of Regular Orders, it also applies to the religious Institutes of which we are speaking. In these, the state of life is more perfect than that of the secular clergy, as declared by the Most Holy Congregation of Bishops and Regulars in the Pinerolen Congregation, regarding the B.M.F., on the 28th of July, 1837, in the 2nd question. Also, in the same Constitution, the manner is established by which a Regular loses

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ecclesiastical benefices through profession, etc.

[*Latin ed. p. 365*]

DOUBTS CONCERNING HOLY ORDERS AND OTHER MATTERS. 365 "Regarding those who, either through religious life or through a change of heart, have abandoned their vocation; what should the Ordinary do if, perhaps, they aspire either to the sacred orders or to marriage?" After a report of this matter was presented to the Holy Father on January 20, 1860, the following was ordered to be replied: If those who have emitted simple vows, either through dismissal from the order or through an Apostolic dispensation, have been released from their vows, they should be treated as the Ordinary should treat any other members of his diocese. Another question was posed by the Bishop of Melitensi, to wit: "What is to be said if, after having received the tonsure and the minor orders, those who have emitted simple vows are dismissed from the Order; will they be admitted to the secular clergy, so that they may wear clerical garb and minister in their own orders, even though they lack the title of sustenance?" The response, given on January 20, 1860, was: Affirmative in all respects, unless some other judgment of the Bishop prevents it; but care must be taken to provide them with the necessary title as soon as possible. They cannot be promoted in any way without having the necessary title. From such doubts and responses, it is understood that, concerning those who have emitted simple vows in Regular Orders, nevertheless, if they have progressed to the minor orders, and if they wish to remain or advance in them, they remain under the jurisdiction of the Ordinary. The Ordinary referred to here is not another, but the one of their origin or domicile. With these considerations, another matter was added, which was presented by the Superior of the aforementioned esteemed Institute, as mentioned above in Doubt I. "I. Can and in what manner can the Bishop (A) admit students of the Institute (B) to Holy Orders, if the Superior declares that these students are assigned to the same house? Or rather, are dismissal letters and testimonials from the Bishop of origin or domicile necessary, according to the form of the Constitution of Innocent XII, which begins: Speculatores?" II. "Can and should the same be said regarding students who have already been promoted to the tonsure, or to some order?" III. "Can and in what manner, notwithstanding the promise of obedience made to the Bishop (A) during Holy Orders, may Superiors..."

[*Latin ed. p. 366*]

366 QUESTIONS CONCERNING HOLY ORDERS AND OTHER MATTERS. "Is it permissible for an Institute (B) to transfer the same students to another province, without first obtaining permission from the aforementioned Bishop?" IV. "In the case of a student leaving the Institute, either by resignation or dispensation, are those students subject to the jurisdiction

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of the Bishop of the diocese in which the house is located, to which they are assigned; or rather, are they subject to the Bishop to whom they were subject before they were enrolled in the Institute?" RESOLUTION OF THE QUESTIONS. — The Sacred Congregation of Bishops and Regular Canons, on May 6, 1864, judged it fitting to respond as follows: To I. Negatively to the first part, affirmatively to the second. To II. Affirmatively in all respects. To III. The Provincial Superior can freely exercise the faculty of transferring students within the province, according to the Constitutions approved by the Holy See. To IV. Negatively to the first part, affirmatively to the second. From the above, we gather the following: I. Religious Institutes of simple vows cannot claim any rights other than those specifically granted to them. II. The faculty of granting letters of dismissal for the reception of orders should be considered among the special privileges, and this faculty cannot be derived from the authority that Superiors of any Institute exercise over their students, independently of the Ordinary of Orense or their domicile. III. The Ordinary of the place cannot, by virtue of his authority alone, initiate the same students into the same orders, after the Constitution of Innocent XII. Speculatores. IV. The obedience that students promise to the Bishop ordaining them cannot infringe upon the rights of the Institute, which, by Apostolic authority, belong to that Institute. V. In the case of a departure, in which the Institute is abandoned, the students are subject to the Ordinary to whom they were subject before entering the Institute itself (1). (i) Sometimes, the Sacred Congregation issues rescripts or indulgences in which a clause is found, instructing such students, when seeking advancement in the Holy Orders, to find a benevolent Bishop who will receive them as subjects in his diocese.

[*Latin ed. p. 367*]

367 OF THE CITY AND THE WORLD. September 18, 1862. DECREE. — "Although, through several Decrees, especially those of February 12, 1840, March 7, 1840, and August 24, 1844, issued by this Sacred Congregation, which presides over Indulgences and Sacred Relics, sufficient and ample provisions have been made concerning the legitimate admission of the faithful into the Sacred Scapular Fraternity, declaring among other things for the acquisition of indulgences and privileges, that the faithful who enter into the same Fraternity should legitimately receive the scapular, or habit, blessed by those who have the faculty, and should wear it continuously hanging from the neck, with one part covering the chest and the other covering the shoulders; and although, with those priests who have the faculty, the form prescribed in the Ritual and Breviary of the Carmelite Order need not be observed, the admission is considered valid, provided that these aforementioned priests do not fail in the essential matters, namely, in the blessing, the imposition of the habit, and the reception into the Fraternity; nevertheless, more and more such admissions of the faithful are

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found to be invalid, and altogether null, so that the faithful are deprived of the Sacred Indulgences and privileges because the habit was imposed by someone who did not have the faculty, or because the habit was made in a different form. But, so that the faithful who are admitted into the Fraternity in this manner are not deceived, the Priest James Etehepare, a Missionary of the Diocese of Bayeux, proposed the following question to this Sacred Congregation: 'Whether, for a valid admission into the Brotherhood of the Blessed Virgin Mary of Carmel, and for all the other benefits, it suffices that, with all other things observed, the habit be made of two pieces of cloth, with the cords attached to the same end, provided that, afterwards, in order to obtain the effective benefits of the Indulgences, privileges, etc., the person admitted himself applies the habit properly made, according to the Decree of February 12, 1840?' Such a clause seems to be added economically to avoid the difficulties that might arise. But if the case arises in which a benevolent Bishop cannot be found to receive him, the Bishop of the origin or domicile is bound to receive him. For whatever value is attributed to the graces given, and to be given, for admission into this Institute, even if they are said to be of incorporation, it follows that, if a cleric cannot find a diocese to which he can be assigned, he cannot be rejected by his own Bishop."

[*Latin ed. p. 368*]

368 DECREE! OF THE CITY AND THE WORLD. II. "Whether admissions of this kind, even those made in good faith up to now, are valid, unless they are revoked, or unless they are healed at the root by the Holy See." "And to this, affirmative." III. "Whether, in order to prevent the disturbance of the pious and other inconveniences, it is permissible for the Reverend Father Missionary of Etechepare to implore the Holiness of the Supreme Pontiff for such a healing for all of France, concerning all past admissions." "And so, in the general meetings held in the Vatican Basilica on August 11, 1862, the Most Reverend Fathers, having first heard the opinion of the Consultor, decided to respond - To the first, negatively; - To the second, affirmatively; - To the third, that it is not expedient, and that petition should be made to the Most Holy Father for the healing of all admissions made up to now in the manner aforesaid, and that this Decree should be published by means of print." "Finally, all of these matters were faithfully reported to Our Lord Pope Pius IX in an audience held on September 18 of the same year, and I, the undersigned, Substitute of the Sacred Congregation of Indulgences, witnessed that Holiness benignly confirmed the resolutions of the Most Reverend Fathers, and, moreover, out of His Apostolic benevolence, He mercifully healed all and each of the admissions, in the manner aforesaid, not only in France, but everywhere; and that, so that the aforementioned resolutions, and the grace of such a healing, may be more easily recognized by all the faithful, He ordered that

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this general Decree be published by means of print." Given in Rome, from the Secretariat of the Holy Congregation of Indulgences, on September 18, 1862. F. Card. ASQUINIUS, Prefect. In place of the signature. A. Archip. PBIL \ ZIVALLI, Substitute. Opinion of the Consultor, summarized. The Consultor observed that those admissions to the sodality of Carmel are to be considered valid, in which priests, having the power to do so, have not failed in the essential matters prescribed in the Carmelite rite, as the Sacred Congregation declared on August 24, 1844. These essential matters consist of...

[*Latin ed. p. 369*]

DECREE FOR THE CITY AND THE WORLD. 369 Regarding the words and the imposition of the habit, and in the reception into the religious confraternity (1). Concerning the habit itself, it is observed that the Carmelite Order's ritual requires the Carmelite scapular, so called because it is like a badge of the Order; its material must be wool, white, or black; its form consists of two parts, so that the scapular, hanging from the neck, covers one part of the chest and the other, the shoulders, P. Gras, *Narratio etc.*, chapter 8. This was also confirmed by the Sacred Congregation in its decrees of February 12, 1840 (2). Indeed (1) See page 246 in the note. To this can be added another decree from La Roche of March 7, 1840, which teaches its faithful to attract more to that confraternity, and states that nothing prevents those who do not recite the Divine Office from receiving indulgences, namely, if they abstain on the fourth day of the month, or if they do not recite seven Paternoster and seven Ave Maria each day. If, however, both the linen cloth and the scapular are worn indiscriminately, by example, by a community of nuns, then on that day, February 12, this is considered a habit. The vicar general of the diocese of Limoges raised the following question: "Does the diocese of Cambray have the power to impose the scapular of the Blessed Virgin of Mount Carmel? He asks the Sacred Congregation whether it can do so." The Sacred Congregation responded: "Yes." Furthermore, in 1840, the following decree was issued: "The vicar general of the diocese of Limoges objects that the faithful are too strictly forbidden to wear the scapular of the confraternity, and asks whether this confraternity, which admits no diversity of color, can legitimately grant indulgences to those who wear it, even if they do not abstain on the fourth day, or recite the seven Paternoster and seven Ave Maria each day, provided they fulfill the prescribed conditions. The Sacred Congregation, after hearing the opinions of the Cardinals and other experts, responded: 'Regarding the diversity of color, such as white, black, or other colors, it is not necessary that the color be the same for all members of the confraternity in order for them to legitimately receive the indulgences granted to those who wear the scapular, provided they fulfill the prescribed conditions, namely, that they recite the Rosary, or the Angelic Salutation, or perform other pious works, and

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that they wear the scapular continuously, hanging from the neck, covering one part of the chest and the other, the shoulders. The same applies to those who wear the scapular of the confraternity of the Dominicans, and to those who wear the scapulars that are generally granted to the faithful by the Pontifical Confraternity for the Blessing of Scapulars, and that are prescribed by the Sacred Congregation in its solutions of doubts, namely: I, 'The color of the scapular (whether it be white, black, or any other color) must be in one place on the body, and it is not necessary that it be in another place.' James, the parish priest, in *Pancia, Tom. I, Fase. VI, 24*."

[*Latin ed. p. 370*]

370 DECREE OF THE CITY AND THE WORLD. deservedly; for the scapular must be that which distinguishes and denominates the society; and which the most holy Virgin Mary herself designated as the particular symbol of the chosen confraternity; and which, from the founding of the sodality to the present day, the Carmelites have used in receiving members. Therefore, the Consultor considered that if the habit is not made according to the prescribed form, material, and color, something substantial is lacking, and consequently, the admission is subject to nullity. Having stated these things, he observed that, with respect to the questions proposed in the first doubt, does a habit made in such a way that two pieces of cloth are placed on one cord at the end, or are joined together only by the passage of the thread, not conform to what has already been decreed by the Sacred Congregation? Therefore, admissions made with this new type of habit, being deficient in substance, must be considered invalid. Having thus resolved this doubt, with respect to the second doubt, the Consultor pointed out that these admissions cannot be validated except by repetition of the rite, or by Apostolic authority. He preferred the first method of validation, as it is easy and in accordance with the law, and which also serves to establish the law more effectively, rather than to remedy the situation superficially. Furthermore, he noted that Pope Gregory XVI, in his decree of April 30, 1832, granted a dispensation for admissions in which the description of the names of the members of the confraternity was omitted in the book of the confraternity, which is another condition that is usually required for a valid admission. However, he continued, the reason for that dispensation is entirely different from that which is the subject of the present discussion. It was concerned with correcting a defect in a secondary law, which was not very certain; which was therefore not fulfilled, because the addition of things and places to it hindered its fulfillment; and to this defect, no other remedy could be applied except by dispensation. He also implied that it was improper for a private individual to request such a dispensation for all of France, whose prayers, without some detriment to the Episcopal authority, to whom the care of its flock is due, are heard. Therefore, the Consultor humbly opined that the aforementioned doubts should be an-

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swered as follows: To the first, negatively; to the second, affirmatively; to the third, it is not advisable.

[*Latin ed. p. 371*]

371 APPENDIX X CONCERNING ERROR IN PERSON IN MATRIMONY. OR QUALITIES. We refer to an appendix concerning a case where an error occurred in the person, or in the qualities, which intervened in the contract, being a condition imposed. It was judged that she truly married Titus, while we indicated that a mistake occurred in the person of the preceding individual; therefore, there was no marriage. To confirm this, in the year 1817, a matrimonial cause was judged by the Sacred Congregation, and, beyond the authority of many Doctors, it alleged a resolution of the Sacred Congregation, concerning other matters, as Cardinal De Luca discusses in chapter 3 of Matrimony, in the Bononian commentary, 2.9, February 1569 (1). Furthermore, the Defender argued that, with regard to this part of the facts, the species of error concerning the person was present, namely, the quality of the nephew of Priest A., who was wealthy; but not directly to the person of Titus. Indeed, as the testimonies reported, Berta abhorred the person of Titus' nephew, and married him due to the persuasions and advice of her stepmother and aunt, who advised her to seize the offered marriage, and to not reject the advantages of life. She did not resist this marriage, but, on the contrary, left her home for this reason; therefore, the Defender argues, this error, concerning the qualities, is reducible to an error in the person.

On the contrary, the Defender of the marriage, insisting on the validity of this union, argued that the error of the name, although pertaining to the person, did not invalidate the marriage, arguing as follows: (1) This case was not correctly alleged. For in it, the man had simulated a foreign name and person, in order to deceive the court, from which, in this way, he could obtain the power to contract marriage before any priest, a power thus obtained being invalid.

[*Latin ed. p. 372*]

372 Appendix X. When it is established that a person contracted marriage with another person. Hence, if someone betrothes, but it is established that the person with whom the betrothal was contracted is not the person under whose name the betrothal took place, but rather a person of a different quality, then it must be presumed that an error concerning the person occurred, which error is demonstrated from the following: "When, having been endowed with abundant wealth, it is difficult to ascertain whether the woman is of her own person, and under an alien name, by which mode she feigned to be called, and if carnal copula follows between them, it may perhaps be presumed to be marriage." Therefore, the Sacred Canons, according to the established rule, do not invalidate an error concerning the

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dowry of marriage. And, it was argued that Berta was not deceived concerning the quality of the person.

Another case of this kind was brought before the Sacred Congregation on September 22, 1708, of which a concise exposition is found in the records of the Sacred Congregation.

"In the month of April, 1706, before the parish priest and witnesses in the parish church of Saint Nicholas of the Crown, Charles Antonius Sauctarellus betrothed himself to Caietana Muschina, a Spanish woman. It was therefore a simple error of quality, which does not invalidate the marriage."

This case was discussed in the Sacred Congregation on August 9, 1817, concerning whether there was a nullity in the marriage, because the person of the man was, in fact, another person than the one under whose name the marriage took place; hence, doubt arose concerning the validity of the marriage. The response was: "Hence, it is negative."

As you observe, even in the present case, Berta contracted marriage with Titius, whom she believed to possess wealth.

The Sacred Congregation heard the case of Em. Urbis Vicarius, by whose order the matter was subjected to examination in the Conservatorio Clementinae, Caietana; namely, that Berta was deceived from the beginning by that Spanish woman, but not concerning any quality intended by her own father, the Prefect of the House of D.D. of the Crown, because the aforementioned son was, in fact, a governor.

[*Latin ed. p. 373*]

X. Moreover, she had many possessions, and therefore livestock, and the bride had never been so strongly attached to this house, and had been forced by the man to go to a certain house in Gaeta, where she lay down, and then, after a few days of protests, declared that she would go to the house of her father, as if she were truly led by the qualities that the man possessed; and at that time, Charles Anthony, outside the city, having diligently inquired about the qualities of the aforementioned house, and about the persons who were there, so that the bride would not be suspected of fleeing from her, wrote a letter, filled with marital love, to the aforementioned bride, and then, after three days, she fled, and returned to her father's house, in the buildings of the DD. of Incoronatis; from there, she was immediately sent to the Conservator of Clementia, and shortly afterwards, she returned to the same father's house; during this time, the aforementioned P. Alfarus, a Theologian of the Holy Penitentiary, in response to the nullity of the marriage, wrote that, under these conditions, the bride had agreed to the marriage, and that the marriage had been celebrated before the Church; however, although in the act of her celebration, she gave her consent without any condition, in her heart, she gave her consent under this condition, that the bridegroom was truly of the qualities that were

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promised, and that, because of the excessive urging of her father for the consummation of the marriage, she did not openly declare it, and although the aforementioned bride and groom had agreed to the marriage before their own parish priest, and had shown this intention to him and to others many times, and had protested it; Charles Anthony gave an affirmative answer to the marriage in the presence of the aforementioned parish priest, and to the woman, who was pregnant, after about a month, she declared that Charles Anthony was not the son of the Governor of Accumuli, but was born of a certain seller, and was therefore disinherited, and was expelled from the house. The aforementioned Most Eminent Vicar, regarding the aforementioned deposition of the bride, as well as regarding two sworn depositions of two Correli,

[*Latin ed. p. 374*]

374 APPENDIX X of the brethren of the Order of the Reformed Franciscans, to testify concerning the aforementioned betrothal, which was entered into before the will, concerning "Whether the validity of the marriage is established in this case." The Holy Congregation of the Council, having considered the case discussed on November 17th, and having been aroused by certain motives, judged it improbable, and indeed, it appeared to them that, in this case, a woman, before entering into marriage, had disclosed to at least two religious persons, before she had completed the marriage, certain conditions concerning the person of the future spouse, which she had not revealed to the parish priest investigating her will, and that she declared that she could consent to the marriage, freely and without constraint, provided that the spouse possessed certain qualities. To support this reasoning, it is best to examine the testimonies of illustrious authors. The authors propose the following case: Caius contracted marriage with Berta, without any condition being attached, but because, a little before the day of the marriage, he had consulted the Theologians of the Pontifical College, who, without observing the proper order, but according to the proposition of the case, gave their opinion, and much less, attended to the words of the contracting parties, and sought the ratification of the marriage after the contract, and consummation, so that in this case, the beginning, or the time of the celebration of the contract, must be considered, as will be more fully explained in the relation, together with the deposition of the bride, and of other witnesses, as will appear in the summary; but he expressly omits to give his opinion on this matter. Therefore, the E.E. Fathers, having considered these and other things which will be adduced from here and there, resolved, before many, that they had decided to take Berta as wife, if she had a dowry of ten thousand gold coins, otherwise, they would repudiate her, or would not take her; after the beginning of the marriage, because Caius learned that Berta possessed nothing, he did not recognize her: Pignatellius asks in Consultation 136, volume 9, also De Angel in De

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Conjess, volume 2, question 44, volume 9, and also Pitonius in Disceptationes Ecclesiae, 52, number 36, opinion 2, whether such a marriage is valid. Pignatellius and De Angel resolve the case in favor of the nullity of the marriage; on the contrary, Pitonius, although he calls this opinion the truest in the eyes of the law, nevertheless, considering the form...

[*Latin ed. p. 375*]

)ix, introduced by the Council of Trent, for §75 x. which was deeply ingrained in his mind*, the celebration of marriage, believes that he was influenced by that council, which was plainly beneficial to him, and from which he would not have departed without serious discomfort, and from the antecedents, and consequences thereof.

Pignatellius, treating this question with particular care, at the beginning indicates the reasons for the validity of marriage with these words: ″It appears that the marriage contract is valid, provided that, in the meantime, the consent of both parties was freely given.

1. Caius did not consent to the marriage unless the condition was understood by the woman, and in that quality, therefore, if this is lacking, there is no consent. 4. Pontius, book i, on marriage, chapter 21, explains this case: ′A woman, before Titus, often protested that she would rather die than marry Titus, if he could, with the condition attached that the marriage would be valid if he were of Jewish descent; and n. 1, 3, the same Pontius narrates, that Caius, before the priest and witnesses, did not repeat the condition that he would declare himself to be of Jewish descent, as it should be after the decree of the Council of Trent, and the words that he uttered before the Church are important, as they indicate a consent that is simple and absolute, without any addition. 5. This opinion is confirmed by the analogy of other cases that concern marriage contracted under fear, or with the intention of being deceived, for if, after the fact, fear or deception is demonstrated in the marriage itself, the condition attached is presumed to have been fulfilled, and the marriage is declared null, as the theologians cited by him hold. He also adds the case of one who acts against his profession, either by coercion or by pretense.

Therefore, having praised the author, he then, with all his might, with almost every argument, in the same manner as he defended the opinion in the case at the end of the chapter on senility and judgment, he defends the contrary opinion of fear and deception in the present matter. The arguments that he presents are reduced to these: 1. The will of Caius is presumed to have remained expressly declared, and it is not presumed that a change was made immediately, so that Caius relinquished the condition, as it would be declared by a judge.

[*Latin ed. p. 376*]

APPENDIX x 376 emitted, which, having been approved, definitively re-

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futes this Pignatelli opinion; and afterwards, no declaration is made. However, after examining the new form, introduced by the Council of Trent, and with the utmost authority of theologians consulted, it is judged, at least in the external forum, that the reasons indicated from the beginning should be considered, those who militate for the invalidity of marriage. First, it insists on this reason, expressed in various ways: such a marriage ought to be considered null, because it ought not to be celebrated without consent; then, because the Scriptures, concerning only the validity of marriage, require that those conditions be present. It rejects the second reason, because, until it is thoroughly proven that the consent was conditionally made, such a condition is presumed to have remained in effect until the act of marriage; and it suffices that that virtual consent, which, as has been said, must be present for the validity of marriage, is not expressed in the act of celebration, and therefore, whatever was not expressed in the presence of the Church, is considered omitted, so that, even if the contracting parties had agreed beforehand, under a condition, they ought to be considered to have withdrawn from that condition with respect to the marriage, if Berta did not have in her goods that sum of money before the act of marriage, as it became apparent before the Parish Priest and witnesses. And the authority of the Gloss on Cap. Tua nos. De Sponsal. is cited. For in law it is said: "A woman is said to be betrothed when, within three days, it is done, L. fin. Cod. de err. etc." From these words it follows that even the response to the third reason is rejected. Finally, the author continues: "Nor do I understand how it can be said that marriage is a sacrament, which, according to Tridentine law, must be celebrated in the presence of the Church, with those conditions and agreements previously made between the parties, if Berta was found to be completely lacking in those conditions and agreements."

Pitonius, however, although not explicitly, in his work, n. 44, loc. cit., says that marriage, in order to be null, "when these agreements are not expressed."

[*Latin ed. p. 377*]

377 X. "Concerning the appearance of the Church, it is said that it is 'not of this world,' and whatever is done in its appearance, and which is established by two witnesses, is heard by the Parish Priest, and by witnesses; these things must be attended to in the external forum." Behold, that which, by being done purely in the appearance of the Church, might afterwards, with a secret intention retained in the mind, be considered as freely and safely done; which benefits in the internal forum, not the external; and afterwards, one of those [parties] might recede and allege the nullity of the marriage, etc.

It appears that such reasons are more serious than those which Pignatellius presents, according to the new form [of canon law] seen in Trent, although, with regard to the ancient Canons, something different may be

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seen. This reason is confirmed by the following: the validity of marriage is to be judged according to the external forum, unless a condition has been expressly stated in the celebration of the marriage. But what has the Holy Congregation of Councils decided concerning this? Because otherwise, it would follow that a deaf person, through manifest expressions of the preceding circumstances, could enter into a marriage, which the Holy Council wished to prevent. Indeed, we imagine a case in which Titius, captivated by Sempronia, so that he might have her at his own pleasure without marriage, might come together with her, so that whatever they do and say, they do not do with the intention of marriage.

Furthermore, it is also recognized from that clause, and from what we have explained in the other [section], although of a different kind, see page 334 in the note. (1) I said "at least in the external forum," because even in the internal forum, it does not seem so easy to judge in favor of the nullity of the marriage in these circumstances. Furthermore, when we speak of the internal forum, it is necessary to defer to the theologians, as noted by the most eminent Cardinal De Luca, *Discipline Matrimoniale*, section 3, paragraph 2. The opinion of Pignatellius is most important to the authority of the theologians.

[*Latin ed. p. 378*]

373 APPENDIX XI. CONCERNING THE TESTAMENT WHICH IS VOIDED AFTER. For a greater understanding and confirmation of those rights, which, for the purpose of establishing or rejecting claims arising from the voiding of a testament, are not less than three, and are presented, and, moreover, have not manifested their intention to alienate, Defenders shall make a SIMPLE DECLARATION within ten years. Then, if the contrary cause or the alteration of the will was acted upon within that time, it can be established. For our matter, the question arises whether the number of witnesses is not less than three for a solemn form, as, for example, it happens if the number prescribed in the testament, namely seven, is not observed in the drafting of the testament, whether this is only for the purpose of proof, namely, the very Justinian Emperor himself (as can be seen in Justinian, Emperor, 27 Cod. De Testam.) established the testator as the one who first innovated the will, and the innovation must be firm. As the negative part of the first question is to be rendered affirmative, the second is certainly to be distinguished; for the Emperor added a penalty for the nullity, and furthermore, he commanded nothing else to be observed except the number of suitable witnesses. To this, we add that, indeed, if a testament was not made, but rather a contrary will was established in its place, is the contrary will prohibited by the laws of the civil law and the law of intestacy? (Thus it is there). We choose interpreters, as Cuiacium states in T. Vf. page 911: "There are only two in which the testament is perfect, the second imperfect, and the second

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breaks... There are two reasons, namely, that the testament is broken, and that the contrary will is revealed, either by the testator's words, or by the actions of the testator, and this either by three witnesses or by the interpreters." But I do not find the case there.

[*Latin ed. p. 379*]

APPEND! ix » It is proposed that a perfect will can invalidate an imperfect one, as long as it is broken according to legitimate law, and it is established that the testator is no longer of sound mind; but this only applies in the case where, without doubt, the testator wishes his will to remain in full force. A will, which is legally perfect, must declare this, and it is advised that this be done, even if the lapse of time does not exceed ten years; however, it is customary for wills to be finalized after ten years; for if the testator had survived for ten years after the will was made, the will would be broken; and it was only for this reason that we have noted the ten-year period, so that it may be more clearly understood that, according to the law, wills are not renewed after ten years, in order to increase confidence and clarity; but according to the law we have established, it is stipulated that wills are not invalidated after ten years, unless the testator has said so, confirmed by the faith of three witnesses, so that the previous will is completely annulled and invalidated. Therefore, you say: "A will without the consent of the testator invalidates the will, which is contrary to the rules of law." However, although, strictly and properly speaking, in the Justinianic form of solemnity, there is nothing that invalidates the will, it is fixed that, if the will has been in effect for ten years, it can be revoked, unless the testator's will is manifestly contrary to it; but the will cannot be denied, even if ten years have passed.

This is briefly stated by Donnei! in Vol. 9, page 99, and by Voetius in his work on Pandects, Book 28, title 5, section 1. The Cardinals of Lucca have also discussed this matter on several occasions, especially in Disc. 88, sections 3 and following, on Testaments, and in the Senogallien documents in Campo Serv., June 11, §. 10, before and in Nullius 1759, Confirmatoria 20, 237. Witnesses must not be lacking in these places, nor must they lack legitimate standing in law, for if they do not possess this suitability, they cannot be called witnesses.

There are those who believe that such testimony cannot be given by women, minors, or others who are prohibited by law from being witnesses, based on the text.

[*Latin ed. p. 380*]

380 APPENDIX in §. 6 Tit. De Testamento, ord. Instit., Xl ratione, ac de insinuatione in acta sunt etiam qui contendant eosdem Principis debere esse 21 assertioni nostrae auctoritatem a d - §. Dig. quibus dit Peretius ad Cod. lib. tit. 22 de pen. rogatos de adstipulatur Nullit. S. iuxta Testam., Rota

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in Testam. 7 Muzzarelli §. 9 necnon matoria 4 Junii Magno %. 7 ac L. Mag. Bononien. n. dicimus. Huic 2 1 . « Sic evanescit (t e - coram » stamentum) lapsu temporis et nuda in confir- » voluntate , quam inter acta m a - coram de » gistratus expressit, vel coram t e » stibus idoneis non minus tribus , 1845 et 1847 Testam, accidere denique in alia confir- 1848 §. 4. Quid- » ex qua Iustiniani Constitutione quid vero de hac sententia sit , il- » fit , neque lud » sine contraria matoria 18 Febr. solummodo tamquam certum constitui posse videtur, non libet testes esse ut lapsus decennii voluntate , neque quos- » contraria voluntas sine decennii. admittendos , sed » lapsu testamentum infirmet. Ita - eos tantum, qui ad fidem de facta » que duo mutatae » ad antiquandum testamentum, d e - voluntatis manifestatione ista concurrere debent faciendam in iudicio idonei habean- » cennii lapsus, et contraria volun- tur et sint. Uno verbo, huiusmodi » tatis declaratio, licet non sit s o - testes omni debent exceptione c a - » lemnis. » Idem fere tradit Marta rere, tum ex parte scientiae rei, de in qua testantur, tum ex parte vera- 4 art. 2 n. 2 2 , qui testamenti citatis ac fidei, quam ipsi meren- ptionem tur, prouti insinuât S. Rota R o - Summ, de in Success, vim » vocationem legal, p A quaes. m- legis Sancimus « r e - testamenti verbalem mana Dec. 4 n. 10 et 11 p. 13 De- » minus solemnem » appellare non cis. dubitat. 196 ». 1 5 . Dec. 92 n. 2 Part. 13 Ex iis , Recent. Deinde animadvertendum est, p o - quae modo statuimus, duo consectaria deducimus, primum decennio , testamentum revo - est, ut revocatio prioris testamenti cari posse cum per testes tres, ita fiat per actum deliberatum non au- tem perfunctorie et in transitu,Rota lito cipis. Iam vero insinuatio in acta Decis. 166 n. 84 Part. Principis, actus est legitimus et for- Requiritur mam minus solemnem ris voluntas ex proposito , modo per se inducens ; cum ita- que duo haec remedia quodameiusdem valoris esse debeant, quippe quae 8 Recent. enim contraria testatoet ani - mo revocandi testamentum. Neque dicitur testamentum revocatum verbis a Testatore prolatis ex sine ambo ad eumdem effectum parien- animo deliberato dum comparata, sequitur, ut trium 96 n. 36 disponendi Decis. testium adhibitio formam minus s o - luntas immutandae voluntatis (v e - lemnem importare dicenda sit eadem luti docet p . 8 Receri. «ädern Namque Rota Decis. vo- 163

380 APPENDIX in §. 6 Title: Concerning Testaments, Ordination, and the Forty Articles, and concerning insinuations in legal proceedings, are also those who contend that the same principles ought to be 21 in support of our assertion, as demonstrated by the authorities cited in §. Dig. which Peretius adds to the Code, book 22, concerning penalties, regarding the nullity of a testament. See S. iuxta Testam., Rota in Testam. 7, Muzzarelli §. 9, as well as the opinion of 4 June, Magna %. 7, and the Bononian Law, n. We say that this 2 1. "Thus, a testament vanishes (t e - before) with the passage of time, and with the naked expression of the will, which is made before a magistrate, or before three suitable witnesses." See Testam., 1845 and 1847, and finally, in another confirmation, 1848 §. 4. "What, then, is

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the meaning of this sentence from the Constitution of Justinian? It seems that it can only be considered certain if it is not contradicted by any other opinion." See 18 Febr. "We do not believe that witnesses are necessary to prove that the will has lapsed after ten years, nor that those who express a contrary will are to be admitted, but rather that the testament is invalidated by the lapse of time. Therefore, only those who are suitable and have the necessary qualifications to testify to the manifestation of the will, and who are able to provide credible testimony regarding the lapse of time and the declaration of the contrary will, should be admitted as witnesses, even if that declaration is not solemn." The same is almost entirely stated by Marta in article 2, number 2, who cites the testaments and, as S. Rota R o - Summ, de in Success, p. A, questions the legal force of the "verbal manifestation of a testament, which we do not hesitate to call less solemn," see law Sancimus « r e - Dec. 4 n. 10 and 11, p. 13. Decis. 196 ». 1 5 . Dec. 92 n. 2 Part. 13. From these, Recent. Then, it must be noted that we deduce two consequences from what we have stated: first, that a testament can be revoked after ten years, either by three witnesses, or also by an insinuation in the legal proceedings of the Prince. Indeed, an insinuation in the legal proceedings of the Prince is a legitimate act of the will, provided that it is induced by itself; since these two remedies must be of equal value, since they both serve to revoke the testament. It is not said that a testament is revoked by words spoken by the testator with a deliberate intention, unless they are compared with a deliberate intention. Therefore, it follows that the presentation of three witnesses implies a less solemn form of changing the will (as is taught by p. 8 Receri. «ädern. For Rota Decis. vo- 163.

[*Latin ed. p. 381*]

x xi. n. 66 Part. 8: Concludenter, ad revocationem, ratio statuit: ut, sive voluerit revocatio, verba mentis sunt observanda, quia, ut robur et soliditas, cum et plena constet clara expressio et per Recent. 381 tuimus, paritatis, e u maioris, tacita, quod (te- decedere ab intestato, sustineatur ac suffravim omnem S. Rotae accipit in ex doctrina citata Decis. 92 n. 5 Par. 13 Rec. ubi nimirum agebatur de praetensa revocatione prioris t e stamenti ob contrariam declarationem, quae a testatore emissa fuisse dvamus, corollarium, e o dirigitur, dicebatur. Hanc enim, monebat R o- ta, nil aliud probare « nisi quamdam imperfectam et indeterminatam propositionem revocandi dictum t e- stamentum, quae ad hunc effectum primo in casu locum non habet prioris testamenti revocatio, » non sufficit, sed opus est, quod bene vero in secundo : quod enim » serio et in secundo ad revocatio- nem procedat aliud testamentum debet ; et quod nullum est, nullum » condendo ; vel declarando se ab parit effectum, ceu commune fert » intestato decedere velle, alias prius adagium. Exemplo sit dispositio ad » testamentum in suo robore per- omnes » manet.» Et paulo post n. 6. <> S e- norunt, valida est quomodocumque » eundo quia semper obstat defectus causas pias , quae

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, veluti constet , etiamsi solemnitates a iure » voluntatis: non enim Carolus (te- praescriptae nulla omnino ex parte » stator) reliquit, sed ad relinquen- servatae fuerint. Quod si demonstre- » dum se praeparabat, et testes d i- tur, eum , qui piam dispositionem » eunt , quid volebat peregisse dictitetur, eam peragere » unde quidem voluisse , sed actu nequa- » facto deducta , non potest appel- quamcomplevisse , quacumque d e- » lari testamentum , nec etiam fa- voluntas in relinquere , fieri, non in vore piae causae sustineri.» Idem edicitur in Bononien. Nullität. Test. 4 1847. coram Muzzarelli§. 7. Consuli etiam potest Gratianus Di- Iunii et cap. Forem. cap. 558 7 6 3 n. 7 et seq. n. 1 et seq.

In summary:

x xi. n. 66 Part. 8: Finally, concerning revocation, the law states: that, whether a revocation is intended, the words of the mind must be observed, because, just as strength and solidity require that the clear expression be complete and fully established, so too, in matters of equality, whether explicit or tacit, that which (the testator) intends to revoke from the intestacy must be supported and sustained by all the arguments of the Sacred Rota, as is evident from the cited decision, Decis. 92 n. 5 Par. 13 Rec., where the matter was discussed of the alleged revocation of a prior testament due to a contrary declaration, which we must consider to be a corollary, directed by the aforementioned. For the Rota warned that nothing else should be proven « except for some imperfect and indeterminate proposition of revoking the aforementioned testament, which in the first instance does not have the effect of revoking the prior testament, » it is not sufficient, but rather, what is true in the second case is necessary: that in order for another testament to proceed in the second instance for revocation, it must be either drawn up; or that the testator must declare his intention to die intestate, otherwise the aforementioned maxim holds: that a disposition for » a testament, remaining in its full » force, is valid, whatever the » reason, because the defect of the causes of » the will always prevents it: for Charles (the » testator) did not leave anything, but he was » preparing to leave something, and the witnesses » testified what he intended to leave, from » which it is understood that he intended to » leave something, but that, by some means, he » was unable to complete it, so that, whatever » the will in leaving, it is not done in » the will of the causes of the will to be » sustained. The same is said in the Bononian. Nullity. Test. 4 1847. before Muzzarelli. The Consul can also consult Gratian, Decretum, Iunii, cap. Forem, cap. 558 7 6 3 n. 7 et seq. n. 1 et seq.

[*Latin ed. p. 382*]

382 APPENDIX XII. CONCERNING THE NEARBY HOLY PENITENTIARY. In Appendix VI, page 126, it was stated that it is permissible for everyone, either by themselves or through others, to petition the Holy Penitentiary for such dispensations. We have also noted that particular agents

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are required; furthermore, we have noted that the rescripts of this tribunal are to be issued free of charge to those seeking them from the external forum, who testify to true poverty, and that no official can receive any remuneration, even if it concerns a special and extraordinary labor. And this is the reason why all rescripts are appended with, and inscribed free of charge, with the impediment of the third and fourth degrees, as well as of spiritual consanguinity. Therefore, all those who petition through agents, whatever sum they pay, must give it to the Roman treasury. In the cases of the second and second-third degrees, the sum is five or six scudi. In the cases of the first and first-second degrees, the sum is six, or seven, or even eight scudi, with a small additional fee, which must be paid to the Apostolic Datary.

If you ask why such a fee must be remitted to the Apostolic Datary, the reason is this: Matrimonial dispensations, which pertain to the external forum, are obtained through the Apostolic Datary, and only with a special concession is the possibility granted that these dispensations can be obtained through the agents themselves, provided that the petitioners are poor; and this was done so that further and more serious expenses would not be incurred.

It will not be out of place here to indicate what the Holy Penitentiary is, and what remuneration, or payment, it has determined for these [agents]. We know, however, that in practice, one scudo is paid, namely, none.

[*Latin ed. p. 383*]

APPENDIX XII. These matters have seemed worthy of note, because agents can be compelled to pay sums for such dispensations. It is not uncommon for some, by feigning labor which is not actually expended, to demand payment as if for services rendered, and to prepare lengthy petitions and prayers concerning the obtaining or having obtained a dispensation, which they must then duplicate and present to the Sacred Tribunal; after which, having written a few lines, they must return to the tribunal to receive the rescript, with the tax paid and sealed. This is entirely abusive, and a disgrace to the Roman Curia, far exceeding what the proper performance of the office requires. Furthermore, when dealing with dispensations of a higher order, these are often not granted unless after repeated requests to the Ordinary, and the agents demand and extort (1) information with shameless deception, thereby increasing the labor, and not only the expense of letters. Therefore, the sum indicated is far too low. And on the contrary, the agents have the right to be reimbursed for the expenses they incur in receiving and sending letters, which sometimes become considerable; hence, for the sake of the business, it is advisable to remit such sums without any request, or at least to demand a lesser amount. The taxes which are prescribed are subject to the discretion of the Ordinary, as is easily understood. Especially when such taxes are levied for just reasons, which

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are called ”indulgences” or ”penalties” in the Apostolic Dataria, they are not under the authority of the Roman Pontiff. All are aware of how many expenses and burdens the Holy See imposes (2).

(1) Those men who act or think in this way are subject to the severe penalties prescribed in various Roman constitutions, as also noted by Pyrrho Corrado in *Praxis dispensat. Apost.* L. 2, c. S, and I. 8, c. 10, at the end.

(2) Pyrrhus Corradus in *Nec de ista receptione, seu solutione compositionis t. 8, c. 5, n. 33* says: ”It is to be wondered at...”

[*Latin ed. p. 384*]

APPENDIX XIJ. These things which we have said concerning *taxa* pertain to matrimonial dispensations, insofar as they relate to external matters; concerning other graces, or if they are extraordinary faculties, absolutions, indulgences, prorogations of faculties, etc., etc., all matters concerning graces are handled, and the fees which the *pauperes* obtain through the Holy See are for the reason of the service rendered, and of this kind they ought to be. Staphilaeus, concerning graces, as reported by Rebuffini in his *practica beneficiaria* in the rule concerning dispensations in the prohibited degree, number 10, where he says that Staphilaeus himself marvels, ”how the Pope would accept a payment for this dispensation; for either there is a just cause for dispensing, and then he ought to dispense; if, however, there is no cause, he ought to reject the dispensation.” To this marvel, the same Rebuffini responds, in the same place, number 15, saying that Staphilaeus would cease to marvel, if he considered how many dispensations of this kind would be obtained, if they were granted freely, since at least those deterred by the fear of expense would not dare, and otherwise would always be averse to approaching the ears of the Pontiff, seeking to be dispensed; this would provide material for committing offenses against the canons concerning dowries. Furthermore, the praised Author adds another serious reason, which is also mentioned by García̧s de benef., page 8, chapter 2, number 101, namely, ”because of the necessities and burdens of the Pope and the Apostolic See, especially for the preservation and propagation of the Apostolic Faith, for which the burdens of the same See are so great and varied that they can scarcely be expressed even by those who experience them directly.” Among such burdens, one must include the many officials who receive remuneration for their offices according to the prescribed *taxa*.

[*Latin ed. p. 385*]

385 FROM THE OFFICIAL ACTS CONCERNING PAPAL ELECTIONS. Our Most Holy Lord, Pope Pius IX, in a Secret Consistory held on the 8th of January, 1866, proposed and designated the following Churches: The Patriarchal Church of Constantinople, in lands of the infidels, to the

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Prelate Ruggero Aloisio Aemygdio de Marchionibus Anticiis, and of the House of Matthaeus-Ducibus Iovis, Priest, and Roman Patrician, Canon Dean, holding the highest office in the Chapter of the Patriarchal Basilica of the Vatican, Domestic Prelate of the Pope, Supernumerary Apostolic Prothonotary, and member of the Secretariate of the Consistorial Congregation and the Sacred College. The Metropolitan Churches, united, of Gnesen and Posnania, in Prussia, to the Prelate Miecislaus Ledochowski, Apostolic Nuncio to Brussels, transferred from the Archiepiscopal See of Thebes, in lands of the infidels. The Metropolitan Church of Granada, in Hispania, to the Prelate Benvenuto Monzón y Martin, transferred from the Metropolitan See of St. Dominic. The Metropolitan Church of Cologne, in Prussia, to the Prelate Paulus Melchers, promoted from the Cathedral See of Osnabrück. The Cathedral Church of Concordia, in the territory of Veneta, to the Reverend Lord Nicholas de Comitibus Frangipane, Priest of Udine, Prelate of that city's Metropolitan Chapter, General Vicar of the same city and Archdiocese, Pro-Synodal Examiner, and Counselor of the Tribunal there for matrimonial causes. The Cathedral Church of Litomerice, in Bohemia, to the Prelate Augustine Wahalae, Archdiocesan Priest of Olmütz, Parish Dean-Archpriest of Muglitz in the same Archdiocese, Supernumerary Secret Chamberlain to His Holiness, Pro-Synodal Examiner, and Judge of that Archdiocesan Tribunal. Acts, Vol. I, Part VII, 25.

[*Latin ed. p. 386*]

"LECTIONES PONTIFICIAE. To the Reverend Lord John Lozano, Priest of Compostella, Archdeacon of that Metropolitan Chapter, Rector of the Seminary there, Doctor of Sacred Theology, and Licentiate in both laws, the Cathedral Church of Palencia in Hispania. To the Reverend Lord Jordan y Soler, Priest of Gerona, Doctoral Canon in the Chapter of Lerida, General Vicar of that city and Diocese, and Licentiate in both laws, the Cathedral Church of Viseu in Hispania. To the Reverend Lord John Pereira de Botelho de Amaral et Pimentel, Priest of the Patriarchate of Lisbon, Dean of the Chapter of Leiria, General Vicar of that city and Diocese, and Bachelor of Laws, the Cathedral Church of Macao in Sinis, which is a Portuguese colony. To the Reverend Lord John Emmanuel Garcia de Tejada, Archdiocesan Priest of the Holy Faith in New Granada, and Parish Priest of Saint Barbara in that city, the Cathedral Church of Pasto in New Granada. To the Reverend Lord Joseph Romero, Priest and Apostolic Vicar in the Diocese of Saint Martha in New Granada, the Episcopal Church of Dibona in lands among the infidels. To the Reverend Lord Joseph Ignatius Arciga, Diocesan Priest of Leon in Mexico, Lecturer in Sacred Theology in the Archiepiscopal Seminary of Mecoacan, Interim Parish Priest of Guanaynati in the same Archdiocese, Canon in that Metropolitan Church, and Auxiliary Delegate of the Most Reverend Clement Munguia, Archbishop of Mecoacan, the Episcopal Church of Lengon in lands among the infidels. To the Reverend

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Father Joseph Luke Barranco, Priest of Arequipa, Professor of the Order of Mercedarians for the Redemption of Captives, Regent, Emeritus Superior in the Monastery of Arequipa, Synodal Examiner of that Diocese, Doctor of Sacred Theology, and Auxiliary Delegate of the Most Reverend John Calienes, Bishop of Arequipa, the Episcopal Church of Carpasia in lands among the infidels. Then the Most Holy Father announced the appointments of churches made from the last preceding Consistory to the present one, for which provision had been made by the Sacred Congregation of Propaganda Fide. And these are the following."

[*Latin ed. p. 387*]

ELECTION OF BISHOPS. 887 The Episcopal Church of Troada, in lands of the infidels, to the Reverend Lord John Marangò, a priest from Syros (e Milos), appointed as Coadjutor to the Most Reverend Francis Zaloni, Bishop of Thinen and Micon. The Episcopal Church of Tripoli, in lands of the infidels, to the Reverend Lord John Williams, appointed as Coadjutor, with future succession, to the Most Reverend John Fitzpatrick, Bishop of Boston. Finally, a petition was made to His Holiness regarding the granting of the Pallium for the Metropolitan Churches of Gnesen and Posen, Granada, and Cologne. FROM AN AUDIENCE WITH THE HOLY FATHER. THE PIOUS ASSOCIATION OF YOUNG WOMEN, September 21, 1865. Father Vincent Basile, of the Society of Jesus, an Apostolic Missionary of Southern Slavs, humbly beseeched His Holiness to deign to approve a certain pious institution, and to enrich it with some spiritual treasure. This is a pious association of young women, called the Congregation of the Daughters of the Sacred Heart of Jesus, which, having been proven useful in practice, is directed towards the end that young girls be led to avoid those dangers which often lead youth to evil, and that they persevere in innocence until the time when they marry. Therefore, for this pious Congregation, the praised Missionary requested the following indulgences: I. A plenary indulgence on the day of their enrollment in the Congregation, and on the day when the enrolled girls marry. II. An indulgence of three hundred days, whenever they attend the monthly meeting, or whenever they use special modesty in their clothing, or whenever they avoid balls, vigils, or other gatherings that are dangerous (1). (1) In Italian, these two requests were expressed as follows: I. "A plenary indulgence for the day of admission, and for the day on which the members take their vows." II. "An indulgence of 300 days each time they attend the monthly meeting, or when they use special modesty in their clothing, or when they avoid balls, vigils, or other dangerous entertainments." Such associations, or pious congregations,

[*Latin ed. p. 388*]

THE PIOUS ASSOCIATION OF YOUNG WOMEN. III. In order that the

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indulgences mentioned above may be applied to the souls of the deceased, who are pious members of the faithful, and that this association may be established anywhere and by any priest, with the consent of the local Ordinary (1). From an audience granted by His Holiness, Pope Pius IX., on September 21, 1865. "His Most Holy Lord, our Pope Pius IX., having considered the matters presented to him by the undersigned Cardinal Prefect of the Sacred Congregation for the Propagation of the Faith, after mature deliberation, has benignly approved the pious association mentioned above, provided that it be established with the consent of the Ordinaries; and with regard to the first petition, He has benignly granted the indulgence, subject to the laws that must be observed; with regard to the second and third petitions, He has likewise benignly granted the indulgence as requested; this decree is valid forever, without any need for a Brief to be issued, but it must be recorded in the acts of the Sacred Congregation for Indulgences." "Given in Rome, in the offices of the Sacred Congregation for the Propagation of the Faith, on the day and year mentioned above." Al. Cardinal BARNABÒ, Prefect. "This Rescript has been presented to the Secretariat of the Sacred Congregation for Indulgences on September 30, 1865, in accordance with the Decree of the same Sacred Congregation of April 14, 1856." In witness whereof, etc. "Given in Rome, from the same Secretariat, on the day and year mentioned above." PHILIPPUS Can. COSSA, Substitute. Associations, are very suitable for promoting piety, and are found to be effective in producing abundant fruits of Christian virtues; however, in order to achieve these effects, a suitable person is required to lead them, and who will direct the associations with constant charity, according to appropriate and established rules. If these conditions are met, more good things can be expected from such pious associations than perhaps would be hoped for by other means. This can also be seen from the evils that result from profane associations that are established under the pretext of conversation and recreation. How many obscenities and scandals are introduced to youth in these private societies, in our own times, no sane person is ignorant of. Moreover, just as hearts are easily corrupted by examples and temptations, and become unsuitable for right thinking and for directing the mind towards Christian virtues; so, by mutual examples of virtue, especially among equals, Christian minds are, with the help of God's grace, aroused and promoted to greater things. (i) We present in Appendix XIV the rules according to which this pious association may be established, with the consent of the Ordinary. Such rules were drawn up in the Italian language by the aforementioned Missionary, and were submitted to the printers in Rome with the approval of His Eminence, the Cardinal Vicar of the City.

[*Latin ed. p. 389*]

389 IX, SACRED CONGREGATION FOR THE PROPAGATION OF

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THE FAITH. CONCERNING DOUBTS REGARDING THE APPLICATION OF THE MASS FOR THE PEOPLE. March 23, 1863. Summary of the case. Bishop N., who in his diocese is also the pastor of one of the parishes, requested from the Sacred Congregation for the Propagation of the Faith whether, on Sundays and other feasts, he himself, as Bishop and as pastor, could satisfy the obligation of offering the Mass for the people with a single application; furthermore, because the Apostolic Vicar of Surinam had requested certain things concerning the application of the Mass for the people, other doubts to be resolved were presented to the Sacred Congregation for opportune consideration regarding the same matter, and these concerned Apostolic Vicars and Missionaries; namely, whether these were obligated to offer the Mass for the people, and by what title, whether by justice, or by charity, under a grave or a lesser obligation. Moreover, besides these doubts, which pertained to the Western Church, on the occasion of a synod held in a Church of the Eastern rite, the acts of which were presented for revision to the Sacred Congregation, four other doubts were added to the previous ones, in which it was principally inquired whether the right, by which the Western Church is governed concerning the application of the Mass for the people, holds the same place in the Churches of the Eastern rite. Therefore, having arranged the doubts, which you will find at the end, and having presented them to the Sacred Congregation, considering the gravity of the matter, the Sacred Congregation deferred its judgment and ordered that two Consultors be appointed, one a theologian and the other a canonist (1). Therefore, two votes, and indeed most carefully considered, were presented to the Sacred Congregation, and although the theologian and the canonist held a different method; nevertheless, they harmoniously reached the intended goal. (i) The theologian, Philip, and the canonist, P. Camillus Tarquini, S.J., were selected as Consultors.

[*Latin ed. p. 390*]

390 CONCERNING DOUBTS, APPLICATION. The *Miss pro Populo* has arrived. We would defraud our readers of a meager benefit if we did not, at the very least, present the opinion of the esteemed jurist. The opinion of the canonist, summarized. The jurist, proceeding with an analytical method, divided the subject of his opinion into three parts: in the first, he proposed to inquire what divine law prescribes concerning the *Miss pro Populo*; in the second, what ecclesiastical law prescribes concerning the *Miss pro Populo*, whether concerning the Western Church or the Eastern Church; and in the third, he applies the doctrine presented to specific doubts. FIRST PART. WHAT DIVINE LAW PRESCRIBES CONCERNING THE *MISS PRO POPULO*. This is the part that the Consultor proposed to examine. 1. Whether this precept is found in divine law. 2. What persons it includes. 3. Within what limits. 4. Whether, beyond the precept by reason

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of office, another precept can be found, to be observed out of charity. Furthermore, concerning the first point, he noted that questions have arisen among the writers, inquiring whether a precept exists in divine law to apply the *Miss pro Populo*, and it seems that the opinion of those who taught that the celebration itself is prescribed by divine law, especially for pastors of souls, but not the application of the same Mass for the people, has prevailed. And they drew their own opinion from the words of the Council of Trent, chapter I, session 23, concerning ecclesiastical affairs: "Since it has been divinely mandated to all to whom the care of souls has been entrusted, to acknowledge their flocks and to offer sacrifice for them" (1). However, after the Resolutions of the Holy Congregations, and especially the Constitutions of the Holy Pontiffs, there is no longer any doubt that the words "to offer sacrifice" in the Council of Trent refer to the application of the sacrifice for the people. Therefore, seeking a positive divine law by which this precept to apply the *Miss pro Populo* is established, he noted that this law does not seem to be found in the first day (1) See Fagnan, in cap. Forenses, p. 1, disc. 29; Fraternitatem de sepulturis, n. 92 sq.; Clerical Discor.

[*Latin ed. p. 391*]

CONCERNING DOUBTS REGARDING THE APPLICATION OF MISS. PRO POP. 391, which was promulgated in the epistle to the Hebrews, chapter 5, verse 1, etc., VIII, 3: Since Saint Paul, in these passages, uses the words: "Every high priest is constituted for men in things pertaining to SS. God, that he may offer gifts and sacrifices for sins," the divine precept must already be presupposed. For the Apostle uses this doctrine as a common term to demonstrate something else. Therefore, although Saint Paul mentions this law, he does not establish this law first. Therefore, the Consultor, inquiring further from whence it must first be repeated, considered that it could not be repeated from anywhere other than from the nature and notion of the pastoral office. For it suffices, as is also deduced from the words of Paul, that someone is a priest, in order that it be understood that he is constituted to offer sacrifices for the sins of the people. Hence, Calmet, in the cited chapter, VIII, verse 3, says, "This is common to all priests, even those who minister in false religions." Therefore, the Consultor concluded: The pastoral office, with its integrity or fullness, carries with it by its very nature the duty of offering sacrifice for the people. With this doctrine explained, it is easily understood who is included in this law. For, according to the divine institution of the Church, the office of the pastor, with its integrity or fullness, resides only in Bishops. Therefore, only Bishops are absolutely bound by divine law to offer sacrifice for the people. And indeed, Paul himself, in the cited passage, does not say "every priest," but rather "πρεσβύτερος," "every high priest," "every prince of priests," "every pontiff." This name belongs only to Bishops in the Church

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of Christ. And, omitting the testimonies of the Fathers, he adds the words of Jerome's epistle to Fabiola: "(1) - there, 'if I should do, or say anything that is worthy of reprehension, I go forth from the saints, and I pollute the name of Christ, of whom I am more pleasing'; how much more so a Pontiff and Bishop, whom it is necessary to be without fault, and of such virtues, that he may always be pleasing to the saints, and be ready to offer sacrifices for the people, a mediator 'between God and men':" Others who have care of souls, besides Bishops, do not have, as their own, an office inherent to the pastoral office, (1) Epistle 64, edition of Vallarsius, and 4 critical volumes, edition of Maurinus. Also, Saint Gregory, book 1, epistle 25 to John, Bishop of Constantinople, at the beginning; and again, book 6, epistle to Salonians, at the end, section 1. Saint Augustine, in the same epistle, to Parmenianus, book 2, chapter 8, at the end.

[*Latin ed. p. 392*]

392 CONCERNING DOUBTS REGARDING THE APPLICATION OF THE MASS FOR THE PEOPLE. The application of the Mass for the people is derived from divine law, but it is exercised by ecclesiastical delegation and constitution (1), and within certain limits. Therefore, when it is said in Church law that it is the duty of the parish priest, by divine command, to apply the Mass for the people, this must be understood not of divine law absolutely considered, but of divine law hypothetically considered (2). A hypothesis, however, is threefold: I. That the Church, in some way, has entrusted the care of souls to the parish priests. II. That this entrustment is not merely facultative, as is often the case with missionaries; but in a way that imposes an obligation. III. That this care of souls has been entrusted without that limitation which would exclude the obligation of applying the Mass for the people. Therefore, when the three hypotheses indicated are verified in the case of the parish priests according to ecclesiastical law, it is within the power of the Church to regulate or remove these conditions, and also to grant dispensation regarding the duty of application; and in fact, the Holy See often grants such dispensation when there is a reasonable cause. Then, the Consultor, proceeding to inquire within what limits this divine precept obliges, considered it not only in its general nature, as far as it is a positive precept (3), but also in its specific form and its properties. Properly (1) St. Thomas, 2nd 2nd, q. 184, art. 6, ad 2 and 3; St. Damasus, Pope, epistle 9 to Prosper. The author from Ávila, on Matthew, 16, q. 87; Caietan, on St. Thomas, 2nd 2nd, q. 184, art. 8; in this matter, the Apostolic letters to the Archbishop of Évreux should be consulted, which are found in the works of Cardinal Gerdil, at the end of Volume XV; also, the esteemed author Nardi, in his Italian work entitled "Dei Parrochi" (The Parish Priests). (2) Even in the Constitutions *Cum semper oblatas* and *Amantissimi* of the Popes, it is not said absolutely from divine command, but that it proceeds from divine command. (3) Positive precepts, as the same Consultor argued,

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obligate only in the case of some urgent necessity, or as St. Thomas says in the 4th Sentences, dist. 17, question 3, art. 1, question 4: "they obligate for a definite time, not because they can be conveniently fulfilled at that time, because if one were to give alms from one's surplus when a poor person is offered, one would commit mortal sin, which is false, but because the time brings about the urgent necessity: and therefore (e.g.) it is not necessary (to say) that if one has a mortal sin, one must confess it immediately, even if a greater opportunity is not expected, because one would commit mortal sin, but when, from the article of time, the necessity of confession arises. This is not from the indulgence of the Church (which knowingly grants an indulgence within a year to confess), which is not required to be done immediately, but from the nature of the positive precept, from which, before the statute of the Church (in the canon of both sexes), one was required." And, as the Consultor argued, this pre-

[*Latin ed. p. 393*]

393> But the purpose of this precept is that it be imposed as a duty, and therefore it adheres to the subject in the manner of a habit, and consequently it cannot be said to be fulfilled by a single act during the pastoral office, but rather it is fulfilled by a certain frequency of actions, namely by applying the Mass several times during the year. And this frequency is determined in much the same way as theologians determine a similar question – how often each priest is obliged to celebrate Mass in a year – for in this question of the theologians, there is also involved a positive and indefinite divine precept, which adheres to the priest in the manner of an office. Indeed, according to the words of the Ritual: "The priest ought to offer." To this question, St. Thomas answers: "I answer that it is said by some that a priest may entirely abstain from celebrating, unless he is obliged by the care entrusted to him to celebrate for the people, and to administer the sacraments." But this is said unreasonably, because everyone is bound to use the grace given to him when it is opportune. Therefore, to the priest, even if he does not have charge of souls, it is not entirely permissible to abstain from celebrating; but at least it seems that he is obliged to celebrate on the principal feasts, and especially on those on which the faithful are accustomed to receive Communion. The words "on the principal feasts" are followed by "SUPER DUBIIS DE APPLICAT. MISS. PRO POP." which, according to ecclesiastical law, means that the positive precept of which we are speaking, namely to apply the Mass for the people, obligates when a true necessity arises, which may be either on the part of the people, or on the part of the law itself. But this urgent necessity, on the part of the people, cannot arise in the matter under discussion, as will be shown above. Therefore, there remains a necessity on the part of the law, which, in order not to be said to be futile, must have its fulfillment. And this fulfillment is achieved by the law if the Mass for the people is applied even once, during

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the pastoral office. And just as with a similar positive divine precept, such as that imposed on the faithful to participate in the divine Eucharist, so Paludanus, Gaetanus, Ledesma, and Victoria teach, that if the time of the pastoral office is not long, it certainly satisfies the law of applying the Mass if the Mass is applied several times during the pastoral office; as Suarez teaches, with some rigor, regarding the other aforementioned precept of participating in the holy Eucharist, if a person's life of faith is long. The reason is clear: so that the law may not be said to be futile, if there is no other urgent necessity, it is sufficient for its fulfillment that the prescribed act be performed, even once, during the office. But if the pastoral office is prolonged, since the people, by the course of the years, are notably renewed, due to an external circumstance, so that a large part of the people may not remain without the benefit of the precept, it is possible that the precept of which we are speaking may obligate several times during the office. This would be the answer, if the law under consideration could be considered only in its genus, as far as it is a natural and positive law.

[*Latin ed. p. 394*]

394 "Regarding doubts concerning the application of the Mass for the people, Saint Alphonsus de Liguori (1) understands this to pertain to three principal feasts, on which the faithful are accustomed to receive Communion, namely, the feasts of the Nativity, Easter, and Pentecost; therefore, he concludes that the opinion is far more common which affirms, 'that priests are not obliged to celebrate [Mass], except three or four times in the year...' And this opinion is in conformity with the Decree of the Holy Congregation of the Council, published in the month of November 1696 (in Monacellium, p. 1, title 5, form 9, n. 15), where it is said: 'He who, without a just cause, does not celebrate [Mass] three or four times in the year, commits a mortal sin, and can be punished by the Bishop.' To this is added the authority of the Council of Toledo, or of Aranda, held under the pontificate of Sixtus IV, in the year 1473, chapter 12, in which, among other things, it is read: 'Furthermore, we exhort our prelates of the province, for the reverence of Jesus Christ, to celebrate at least once a year.' If they act otherwise, they will be severely reprimanded in the following council.' And in the title of the same chapter, it is read: 'That Bishops shall celebrate three times, and Priests four times, at least, in the year.' Therefore, the Fathers of this Council judged that the divine precept of celebrating the sacrifice obligated pastors three times in the year. Consequently, by analogy of reason, the Consultor considered that the same should be said of the precept of applying the Mass for the people, considering only the divine law. After these things, the Consultor denied that this obligation could arise from charity. 'For an obligation arises from charity only from the necessity of another' (Suarez, *De Sacram.*, disp. 86, sect. I, and elsewhere). Furthermore, he added that it cannot be found in any certain case in which the application of the Mass

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for the people is necessary, either for obtaining eternal salvation, or at least for maintaining the state of justice. Moreover, the application of the Mass for the people cannot be said to be a necessary means for either of these things, or for any other end, either because it is never a unique means; for there are other means of this kind, such as the sacraments, or at least prayer; or because the fruits of the sacrifice are never lacking to the people, in sufficient measure to obtain graces. For the people of God participate in the general fruit of the sacrifices, according to the general application, which is read in the Canon: 'for all the orthodox and cultivators of the Catholic faith' (Benedict XIV, *De Sacrif. Missae*, I, 3, c. S, and others commonly). From this it follows that... [The text is incomplete.]"

[*Latin ed. p. 395*]

ON DOUBTS CONCERNING THE APPLICATION OF THE MASS FOR THE BENEFIT OF SOULS, 395: Is the lack of application not a privation? But rather, is it only a less abundant application of the fruit of the Sacrifice, which, although considered less, can never be said to be insufficient, in order to obtain any grace whatsoever? For the insufficiency, if it is to be considered, would arise only from a defect in disposition in the people, and this defect of disposition can even render ineffective the fruit of the Mass offered for the people. After such direct argumentation, the Consultor presented another, indirect argument. For, if a true necessity for the fruit of the Mass, of which we are speaking, could be found among the people, then those who are unbelievers would certainly be more in need of it than the faithful, who have other means available to them. Consequently, it would be necessary for the Church to have a precept, out of charity, to apply the Mass for unbelievers. For charity encompasses all who come to us under the name of neighbor; that is, all those who are capable of active and passive love of God, as taught by St. Augustine, Scotus, and Cardinal DeLaurea in *Tractatus de Spe et Charitate*, disputation 8, n. 63. And therefore, it encompasses all those who are joined to us by the capacity to participate in the same eternal blessedness, as St. Thomas teaches in *Summa Theologica*, 2-2, question 23, article 5. Within this sphere are also found unbelievers who are on the path of life. However, such a precept has never been recognized by the Church. Therefore, etc.

Nor should you say: that unbelievers are incapable of receiving the fruit of the Mass of which we are speaking. For this opinion, besides being rejected by sounder theologians, would be intolerable in the present question. It is contrary to the nature of the Church, and to its Author, that a truly and properly necessary means for the eternal salvation of the neighbor (according to the present hypothesis) should be given, and yet not be able to be applied. Furthermore, charity also differs from justice in that justice urges only those who are bound by some assumed duty or obligation; whereas, on the contrary, charity urges all those who are able to provide a remedy

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for the true need of the neighbor within their power: therefore, all priests should be obligated to apply the Mass for the people. For it is known to no one that there are many abandoned Christians who are deprived of this help. And the excuse would be futile: "If I knew; if I were present, etc." For knowledge is not lacking, and presence is not required. However, such a precept has never been recognized by the Church. Therefore, etc.

[*Latin ed. p. 396*]

396 CONCERNING DOUBTS REGARDING THE APPLICATION OF THE MISS. FOR THE PEOPLE, PART SECOND. WHAT IS PRESCRIBED BY ECCLESIASTICAL LAW, EITHER REGARDING THE WESTERN RITE, OR REGARDING THE EASTERN RITE. — Therefore, the Jurist, proceeding to the second part which he had proposed to explain, inquired into which persons the precept of divine law, concerning which we spoke in the preceding part, extends, and to what time; first, he spoke concerning the Westerns, and then concerning the Easterns. In the Western Church, before the Council of Trent, there does not seem to have been a universal law which determined the obligation of applying the Mass for the people, although there were not lacking particular customs and laws which obligated certain dioceses or provinces, and on certain days. For, the question was debated, whether the Parish Priests were bound to apply, or merely to celebrate: those who defended the latter opinion, explained certain words of Trent, session 23, chapter 1, concerning reform, with the argument that, because by no positive law, nor by the institution of any benefit, is the application of the Mass for the people prescribed, as Barbosa notes in *De officio et potestate Episcopi*, page 2, allegation 24, number 23. Others, following the former opinion, cited only the words of Trent, and did not adduce any preceding universal law. *Clericatus Discord. Forens.*, page 1, discourse 29; Monacellius, *Form. leg.*, title 16, form 18 and following; Pasqualigus, *De sacrif. novae leg.*, question 852; Fugnanus, *in Cap. Fraternitatem De sepult.*, number 92; Reiffenstuel, *in tit. celeb. miss.*, number 22 and following; Benedict XIV, *Instaurationes*, book 1, and following, etc. Indeed, (the Jurist continued), in the chapter of the Council of Trent, this obligation is mentioned by accident, along with other pastoral duties, so that the necessity which urges pastors to remain is deduced from it; for it is written: "Since it has been commanded by divine law to all to whom the care of souls has been entrusted, to acknowledge their sheep, and to offer sacrifice for them, and to feed them with the word of divine preaching..." which things cannot in any way be accomplished by those who do not attend to their flock; the Holy Synod admonishes them, etc." — This arrangement of Trent presupposes the obligation of applying the Mass for the people, of a kind which can be deduced from divine law, either absolutely, if it

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concerns the WESTERN RITE.

[*Latin ed. p. 397*]

ON DOUBTS CONCERNING THE APPLICATION OF MISS. PRO POP. 397 concerning Bishops; or hypothetically, if the matter pertains to others who hold a parochial benefice. Nevertheless, according to the common consensus, and with the addition of authentic declarations, these general words are considered as the foundation of general ecclesiastical law. However, the Consultor declared that the words refer to "all those to whom the care of souls has been entrusted." Many are said to have the care of souls. Firstly, there are those who hold a benefice with which such an office is directly and principally connected, such as Bishops and Parish Priests, whatever their name may be. Secondly, there are those who, in the case of the vacancy of the aforementioned benefice, or even those who actually exercise the office, while habitual care remains with others, or in a similar case, represent the person of another, whose office they exercise; such are Vicars Curate, whether perpetual or temporary, and removable; Apostolic Vicars, who, with the suspension of the appointment of Bishops, are sent to canonically erect a church in a bishopric, or those administrators of churches, equally belonging to a bishopric, who are appointed in place of an absent Bishop, of whose life nothing is known, or of a Bishop suspended from his duties, etc. Thirdly, assistants to pastors, who do not act in their place, but assist them, such as chaplains paid by Parish Priests, even if they are established in a subsidiary church; or Suffragans, if the matter pertains to Bishops, who are usually given not to the people, but to the Bishop, to assist him in pontifical matters only, as Rigantius states in Reg. L Cancel. §. 7, n. 87 and 81. Fourthly, those who administer the sacraments only out of charity, such as certain Regular or even Secular priests, who, at least on feast days, assist a neglected parish: to this order can be referred Missionaries, who, with commendable generosity, emigrate to distant regions, or to preserve the faith of Christ, or to foster the same faith in Christian peoples, in whom there have never been canonically erected parishes; or even Apostolic Vicars, among the Missionaries, who go to those same regions in which a bishopric has never been established. All of these can be said to have the care of souls entrusted to them. However, the Consultor was of the opinion that only those belonging to the two aforementioned orders are included under the Trident Council's law. To demonstrate this, based on the aforementioned principle, according to which no obligation should extend beyond the clear meaning of the obligation, in an examination...

[*Latin ed. p. 398*]

398 CONCERNING DOUBTS REGARDING THE APPLICATION OF THE MASS FOR THE PEOPLE: The Council of Trent revoked the decree according to which only those pastors of souls are bound to offer the sacri-

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fice for the people, who are by the Council obligated to reside in the same place. Those who are obligated to reside in that place are indicated by these words: I. All those who are prefects of patriarchal, primatial, metropolitan, and cathedral churches, whatever their name or title may be. II. All inferior curates, and others, by whatever name, who hold some ecclesiastical benefice with the care of souls. Furthermore, only those who belong to the first order mentioned above are included, and, by the same reasoning, also those who belong to the second order. For he who is placed in the place of another, to represent that person, and to exercise all the duties of that person, is considered one and the same person. Therefore, the others remain exempt from the obligation of applying the Mass for the people. And indeed, according to the law of Trent, those are bound to offer the sacrifice who are bound to acknowledge their own flock. Furthermore, neither stipendiary chaplains appointed by the parish priests, nor suffragans in pontifical offices only, who are given to the bishops and not to the people, nor any other person who assists a neglected people not by a pastoral title, have their own flock. Such men, therefore, are not included under this law. Do not say: if missionaries did not have their own flock, those flock would be without a pastor. Indeed, it is false to say that they are without a pastor, when they are the flock of Peter. All of these things were confirmed by authentic declarations. And in order to maintain brevity, the Consultor considered it sufficient to bring forward the Constitution *Cum semper oblatas*, of Benedict XIV, who was accustomed to abundantly recall all the decrees that had been issued before him. In this Constitution, however, only the following are named: 1. Possessors of a parish benefice, even if they are poor. 2. Parish vicars, even if they are removable at the will of another, or appointed for a short time. And the Mass for the people is called the parish Mass (for the people), as if it were exclusively that of the one who holds the parish benefice, or the vicar who is placed in his stead. Therefore, the others who are numbered in the third and fourth orders are excluded, whom the praised Pontiff could neither ignore nor pass over in silence, if he had judged otherwise.

[*Latin ed. p. 399*]

Regarding doubts concerning the application of the Missa pro populo (Mass for the people), number 399, this doctrine was further confirmed by the Consultors, among whom none could be found who considered this obligation to extend beyond those previously mentioned. Indeed, Ferraris, in *Verbo Missae Sacrificium*, article 3, and Giraldi, page 2, section 85, concerning prelates, when asked whether others might be considered obligated, at least by some, to apply the Mass for the people, do not mention anyone other than Regular Canons for their subjects, because they exercise, by strict duty, a parochial office. Nevertheless, as Giraldi reports, this question, when presented to the Apostolic See, remained unresolved.

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This is worthy of note, for those who might seem to be included under the Tridentine law would be those Regular Canons who, more truly than parish priests, have their own flock. For the flock of parish priests is, in the end, the flock of the Bishop. To this opinion would adhere the authority of Suarez, Merati, Pasqualig., Tamburin., Rotar., Hurtad., Naldi, Ferrar, Monacel., Clericat., Donati, Murg., and others. However, from the firm principle that the words of an obligation are strictly interpreted, it is possible that a definitive judgment was not given. And furthermore, Pope Benedict XIV did not mention this matter in the aforementioned Constitution. Therefore, if this holds true for Regular Canons, all the more so should it be maintained for those whom we have mentioned in the third and fourth places, whom no one has yet said to be obligated to offer the Mass for the people. Still not satisfied with this, the Consultors, in order to exclude more clearly those whom they had listed in the third and fourth places from this obligation, presented other arguments, which concerned especially the Missionaries. For Missionaries can be compared to those priests who, at the request of Bishops, come to a neglected parish out of charity, in order to administer the sacraments. Such priests are, by common estimation, never considered to be obligated to apply the Mass for the people, although they often apply it out of generosity. And if there is a difference, it favors the Missionaries. Therefore, just as the former, so too these, should be considered excluded from the obligation of which we are speaking. And do not say: Missionaries sometimes receive stipends. For such stipends, if any, are given to support their life, only as alms, so that they may be able to perform works of charity.

[*Latin ed. p. 400*]

400 REGARDING DOUBTS CONCERNING THE APPLICATION OF THE MISSA PRO POPULO. Indeed, the Consultor demonstrated that the same opinion held regarding Missionaries, and it holds regarding these Priests. This, or a similar argument, was derived from the testimony of Roderius, in *Tractatus de Questionibus Regularum*, Volume 1, Question 85, article 5, in which, after posing the question, "Are the Religious of India pastors?", he responds: "I answer, that a Bishop can assign a monk, with the permission of the Abbot, to a secular parish church, as is the tradition, etc." However, the Religious of India are not pastors of the Indians, neither by the Brief of Pius V, nor by the Provincial Chapters; because each is received according to the manner of the recipient: but this manner of receiving, namely, the ought of a parish priest, has never been accepted by the brethren, nor as pastors; for the brethren have always avoided imposing this grave burden upon their shoulders. Furthermore, before this Brief of Pius V, it was certain that the brethren were not pastors; for this is what the Bishops requested of them, and what they themselves refused. Therefore, even after the promulgation of this Brief, the consequence is clear;

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for nothing is prescribed in the Brief to the Religious, concerning being pastors, etc. Furthermore, Pellizzarius, in *Manuale Regularium*, Tractate 8, chapter 4, section 3, number 90, adds to this. Moreover, Church practice also demonstrates that Missionaries are not attached to any See by canonical title; nor do they possess the ordinary faculty of administering the sacraments, which are two essential things for parish priests; but to them is assigned the office of propagating the Catholic faith among various places of infidels and heretics, and of administering the necessary sacraments to those converted to the faith, with faculties that are more or less extraordinary, as is noted. Cardinal De-Laurea, in *Tertia Sententia*, Volume 3, page 3, dispute 18, article 1, number 15 and following, writes among other things: "The office of a Missionary is to preach the Gospel and the Catholic faith to Pagans, Jews, and Heretics, in the places of his mission, and to administer to them the sacraments necessary, according to the faculties granted to him by the sender." How much these differ from the nature and obligations of parish priests, everyone understands. According to the doctrine expounded thus far, the Sacred Congregation for the Propagation of the Faith has responded on several occasions. And indeed, concerning the Missionaries of Peking, in the year 1798, their Bishop related certain circumstances, because of which he seemed to believe that these Missionaries were subject to the application of the Missa pro populo. He observed that...

[*Latin ed. p. 401*]

ON DOUBTS CONCERNING THE APPLICATION OF THE MASS FOR THE PEOPLE, 401. This aim, for the Missionaries, is not merely to exercise all parochial offices according to ecclesiastical laws, but also, among themselves and other Chinese priests, to establish a certain distinction; for these freely traversed mission territories within the district's limits, while, on the contrary, they observed a strict residence in the city in which they were established. However, the Holy Congregation responded, according to provisions made by a decree approved by its Holiness on January 28, 1798. In this decree, it was declared: "They are in no way to be considered as parish priests, but as simple heralds of the Word of God." Furthermore, in the year 1804, a doubt was proposed: "Are the Missionaries of China, Cochinchina, and Siam, who minister to Christians for a time, obliged to apply the Mass, not only on Sundays and major feasts, but also on other feast days, on which Christians are indeed required to hear Mass, but may be excused from servile works?" To this, the response was: in the decisions of February 5, 1803. These decisions were expressed in these words: "Regarding the questions which A. E. proposed concerning the application of the Mass, the Holy Congregation responded, according to what has already been decreed, that neither the Vicar General, nor the Coadjutor of the Apostolic Vicar, nor even the Apostolic Vicar himself, are subject to any obligation by justice to apply the Mass on feast days for the people to whom, by these

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titles, they preside; but only out of charity it is fitting to do so; from which it is clear that no absolution is required for the omission of the application of the sacred rites." After these things, the Consultor reviewed one or another response, which might present some difficulty, namely, the response given to the Apostolic Vicar of Curaçao on September 12, 1843, which is as follows: "Regarding the other question, namely, whether the Workers of the aforementioned Vicariate are obliged, on feast days, even those that are abrogated, to celebrate Mass for the people, know that we wish that, in canonically erected parishes, Missionaries who are parish priests, that is, those who have care of souls, are obliged by justice, while other Missionaries, however they may exercise that care, are not, unless out of charity." Regarding this response, the Consultor argued that it could not easily be reconciled with the others, and he considered that this was a case from which one should depart (1). Furthermore, some observations were made concerning one or (1) See page 109 in the note, and the resolution of the doubt on page 110. /icta. tom. fase. VII. 26

[*Latin ed. p. 402*]

Regarding doubts concerning the application of the Missa pro Populo, he briefly indicated two answers, which he showed to be entirely in conformity with the other decrees, specifying the days on which the same law urges Western pastors, according to the established Constitutions: "Cum semper oblatas" and "Amantissimi." Therefore, having briefly touched upon all these matters, which were copiously discussed by the Consultor, a discourse was to be instituted concerning the law that obtains among the Easterns in the matter under consideration. From the documents which the Consultor had before him, he gathered these two points: 1. Traces of the implementation of the law in question are not found, except in very few places, and even in those places, the influence of the Latin rite is present; and this shows us not a uniform, but a varied situation. 2. Concerning the remaining Eastern regions, either that law is not known to be in use, or at least it is ignored, and it appears, not without serious doubts, that it is not in use. Therefore, the Consultor inquired, in these circumstances, what should be done, and what rule should be followed, concerning those same Eastern regions. Considering the practice that the Holy Congregation has followed up to now, he was of the opinion that it should be followed. And such a practice seemed to him to be easily reducible to these four points: 1. The law of applying the Missa pro Populo, as regards its substance, also applies to Eastern parish priests. 2. As regards the manner, or the days on which it must be fulfilled, if a customary practice or a law is found to be in force among them, it should be observed, provided that it is not openly unreasonable. 3. To the extent that such a custom or law is not in force, it should be determined according to the laws of the West. 4. If a difficulty arises, a reduction, more or less

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significant, may be granted, according to the nature of the difficulties encountered; and if these are entirely prohibitive, a dispensation may be granted, with the obligation of praying for the people in those same Masses that should have been applied. The Consultor showed that such rules are reasonable and entirely in conformity with the principles of law. And as for the first rule, from which the others follow, he did not consider that it was derived from the ecclesiastical law of the West, since another seems to have been the practice of the West up to now concerning the matter in question, but he demonstrated it from the intention of the Church in the institution of the parish office, and consequently from the nature of that same office. Indeed, it is certain that the Church instituted the parish office as a pastoral ministry, wherever the parish priest may be, whether in the West or...?

[*Latin ed. p. 403*]

ON DOUBTS REGARDING THE APPLICATION OF MISSIONS FOR THE PEOPLE, 403, or in the East. From this, it follows that everything which is proper to the office of a Pastor, except for those things which exceed the capacity of priests, or which have been, without any doubt, excluded from that office, must, by force of institution, be understood to also belong to the proper duties of Parish Priests. And just as it is not necessary to cite a particular law to conclude that a Parish Priest, by force of his office, is bound to recognize his flock, and to feed them with the divine word, the administration of the sacraments, and the example of good works, wherever the Parish Priest may be established, whether in the West or in the East; so too, it is not necessary to adduce a law to show that, by force of his office, he is bound to offer sacrifice for his flock. The reason for the second rule, which has been consistently observed by the Holy Congregation, is sought in the fact that the Eastern Church is governed by its own customs and laws, and is not bound by the laws of the West, unless the nature of the matter, or the express will of the Holy See, requires it. However, in the present case, the nature of the matter does not designate specific days, and therefore, a reasonable custom, or a law that determines these days, must be observed. The reason for the third rule is sought in the fact that, in practice, it is necessary that a specific number of Masses be determined, and it is in accordance with the Holy Canons that the law which is in force in the other part of the Church be applied for this purpose. Indeed: 1. In accordance with the Holy Canons, uniformity should be maintained, as far as possible (1). 2. Because, in similar cases, the Church has followed the same rule, as is evident from the practice of citing the Canons of Provincial Councils. 3. Because, according to chapter I of the document concerning the new work, in the absence of Canons, civil laws are applied (2), and therefore, a fortiori, ecclesiastical laws which are in force in the other part of the Church should be applied. 4. Because the law of the West, in the present

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case, is not local, but (1) Council of Venice, year 465, canon 15; Council of Agde, year 699, canon 30; Council of Epaone, year 517, canon 27; Council of Gerona, year 517, canon 1; Council of Braga, year 563, chapter 1; Council of Toledo IV, year 633, canon 2; Council of Toledo XL, year 675, canon 3; etc. (2) In this chapter it is read: "Because, just as civil laws do not disdain to imitate the sacred Canons, so also the sacred statutes of the Canons are aided by the constitutions of the Princes... and because no Church is to be constructed in prejudice of another, the business itself should not be delayed in concluding according to the statutes of laws and canons."

[*Latin ed. p. 404*]

404 CONCERNING DOUBTS REGARDING THE APPLICATION OF THE MISSIONS *ad gentes* WITHIN THE INTERIOR TERRITORY, and therefore, in every place, it derives its force (1). If, however, the application of this rule encounters difficulties, there is no doubt that the fourth rule should be applied, as it seemed to have been observed until now. We are dealing with a matter concerning which, when dealing with Parishes, total dispensation can be granted; for Divine Law does not recognize Parishes, the existence of which is entirely derived from ecclesiastical institution; and there is a just reason for dispensing, arising from the nature of the difficulties.

THIRD PART: THOSE THINGS WHICH ARE DISPUTED, ARE APPLIED TO THE FORMULAS OF DOUBTS. – From the doctrine most extensively expounded by him, the Consultor deduced a careful response to each doubt concerning the Western Church. He considered it necessary to respond negatively to the first doubt, provided that it is not a matter of places in which a diocesan See, and canonically erected Parishes already exist, and to which a Vicar Apostolic, and Missionaries have been sent, to perform the duties of legitimate Pastors. To the second doubt: "it is provided for in the first." To the third doubt: "it is to be avoided" or rather: "the expression 'tenetur ex charitate' should be avoided," and instead it should be said "it is fitting out of charity"; and this, so that no signification of a properly defined obligation appears." To the fourth doubt: "it is provided for in the third." The response to the fifth doubt, after what has been said, depended on a judgment to be made regarding the fact, namely, whether canonically erected Parishes existed in that Vicariate. Furthermore, from the reports of those Missions, the Consultor deduced that such Parishes did not exist. It was established by the facts that: in the year 1816, the Catholics of Surinam had no church; in the year 1820, the state of religion was truly miserable. However, the following seemed to present a difficulty: From reports received in the year 1844, concerning (1) The very Greek Schismatics, in the collection of canons, published in Quarten by no. 1800, in the second annotation, of the second canon of the Trullan Council, say thus: "Just as the Œcumenical Council V accepted the

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works of SS. Augustine, and Ambrose, in which the faith was defended against heretics, so also we, those things which are in accordance with the Synods of the West, have accepted."

[*Latin ed. p. 405*]

CONCERNING these QUESTIONS RELATING to the APPLICATION of MISSIONS for the POPULATION, number 405, dated the 29th: "Are there Parishes there, or only simple Missionaries?" The response from the Apostolic Vicar was: "The Reverend Mr. Groof is the Parish Priest of the city of Paramaribo, and the Missionary Gerard Schepers is a Parish Priest of Nicheria, delegated by the Prefect." To question 3, "How many are the Parishes?" The response was: "There are three Parishes, namely: 1. in the city of Paramaribo; 2. in the leprosarium at Batavia; 3. in the upper part of Nicheria." Also, to question 30: "Are the Parish Priests permanent, or are they removable at will; and do they celebrate Mass on feast days for the people?" The response was: "The Reverend Prefect is a permanent Parish Priest. The delegated Parish Priest is removable at will. Both the Parish Priests and the Missionaries, if not prevented by illness, celebrate Mass daily, and also on Sundays and feast days for the people." Furthermore, the Consultor investigated whether these were to be considered true Parish Priests, or rather, simple Missionaries; and whether the parishes should rather be simply called churches. Indeed, the same Apostolic Vicar, in response to question 31, in which it was asked from whom such Parish Priests are chosen, responded: "The Parish Priest is chosen by the Sacred Congregation for the Propagation of the Faith. However, the Sacred Congregation does not choose a Parish Priest, but only a Missionary, or a Prefect of Missions." Also, to question 33, in which it was to be indicated the boundaries of the individual parishes, the response was: "The boundaries of the parishes are the Ocean, the shores, the rivers, and the uninhabited forests." However, from other documents, it was gathered that Mass is celebrated for the people by all the Missionaries, except for devotion, and that all the Missionaries are generally called by the name of Missionaries. From these, and other similar valid conjectures, the Consultor argued that there are neither true Parish Priests nor true parishes in that mission, and therefore, he believed that the fifth question should be answered: "negatively, and that the decrees of January 28, 1780, and of February 5, 1803, should be cited." These decrees have been mentioned above. Regarding the sixth question, the Consultor noted that the necessary elements were lacking for making a judgment; for at least it should have been indicated by the Bishop whether the parish, of which we are speaking, is united to the episcopal table by a full and extinguishing union, or otherwise (1). For if the union is not a full and extinguishing union of title, it did not seem that the Bishop could satisfy himself with the celebration of a single Mass (1). See page 9, section.

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When.

[*Latin ed. p. 406*]

406 CONCERNING DOUBTS. APPLICATION OF THE MASS FOR THE PEOPLE. Regarding the obligation. The following points were brought up in the case of Visen, concerning the application of the Mass for the people on December 17, 1803, which was discussed in the Congregation of the Council: "From the Council of Trent." - there - "From the Council of Trent" it is stated that it is divinely mandated for all those "to whom the care of souls has been entrusted to acknowledge their flocks and to offer sacrifice for them; and therefore, if the Bishop retains the care of the cathedral parish, he is obligated to apply the Mass for the people." Nor can the Bishop, even if he, as the pastor of the entire diocese, applies the Mass for the entire flock, be excused from applying the Mass for the parishioners. For if he himself manages the cathedral parish, he must offer two distinct sacrifices, not only for the entire flock, but also for the sheep of the parish. This is well known to the most vigilant Bishop, who demands nothing other than that the Mass be alternately applied by the pastors at his expense. Although the application of the Mass for the people has been imposed upon pastors in such a way that they must fulfill it themselves, and not through another substitute, nevertheless, if there is a necessary impediment, the Holy Congregation permits them to have it fulfilled by others. However, the Bishop is legitimately considered to be impeded from performing the application for the parishioners, while he is obligated to do so for the entire flock. Also, in §. Merito of the same case, and also in another case, Nidlias, September 12, 1824, §. Again (1) - there - "And thus this burden (of the Mass for the people) pertains to the person of the pastor, who actually has charge, so that if the Bishop actually retains charge of the cathedral parish, the sacred rite for the people must also be performed by him. Nor, if the Bishop, as pastor of the entire diocese, applies the Mass for the entire flock, can he therefore be excused from applying the Mass for the parishioners, as is noted, etc." When a full union has not been made, the title and office remain, which are distinct from the episcopal title and office; and therefore, distinct burdens remain attached to them. Such a doctrine seemed to apply in the present case, in which the Bishop held both titles, so that the parish was not considered as part of the diocese particularly administered by the Bishop; and otherwise, such unions of parishes are mentioned. See page 268 in the note.

[*Latin ed. p. 407*]

ON QUESTIONS REGARDING WHAT IS APPLICABLE TO THE MISSIONARY MASS FOR THE PEOPLE – to the episcopal see, concerning which the title and the parochial office are removed, this is not usually the case. However, with regard to the manner in which this obligation

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should be fulfilled, the Consultor did not fail to note, in addition, that two laws are opposed. The first declares this obligation to be personal, and therefore prohibits its fulfillment by a substitute; (1) the second determines the holy days, and prohibits translation without dispensation, according to the Constitution *Cum semper oblatas*. Indeed, it did not seem to the Most Reverend Bishop himself that he could administer said parish, which is located approximately twenty Roman miles from the cathedral. Therefore, the Consultor believed that the fifth question should be answered "with just exposition, negatively, and with the following reasoning:" The reasoning of the Consultor was that if the Bishop does not appoint a Vicar in the city (of the parish) for the administration of the parish, he should appoint one, and through him also fulfill the obligation of the Mass for the people; and in determining the appropriate amount, consideration should be given to the burden of this obligation, according to § 9 of the Constitution *Cum semper oblatas*. Such opinions of the Consultor were fully approved by the Holy Congregation, as will be evident from the following. I. "Do Apostolic and Missionary Vicars, who in any way undertake the care of souls in a particular place, have an obligation to indiscriminately offer the Mass for the people on holy days?" Answer: Negatively. II. "To which Apostolic and Missionary Vicars does this kind of obligation apply?" III. "Do those who are not bound by law have an obligation to offer the Mass for the people out of charity, or are they bound by charity to offer the Mass for the people?" IV. "If the formula 'it is fitting to be bound by charity' is approved, does this mean an obligation under a grave penalty?" V. "Is the Apostolic Vicar of Suriname, and other Missionaries..." (1) *S. Congr. Concilii in Fesulana missae parochialis 26 Ianuarii 177*; and in *Castri Alb. Visit. SS. LL. 18 ad II. Iulii 1789*.

[*Latin ed. p. 408*]

408 REGARDING DOUBTS CONCERNING THE APPLICATION OF THE MASS FOR THE PEOPLE » of the aforementioned Vicariate, they are obligated to apply the Mass for » the people. » VI. (1) « Does a Bishop (N .) who exercises the office of Parish Priest, fulfill also » the obligation, by the application of the Mass, which he has » because of his Parochial office? » VII. « If the same Bishop does not fulfill the Parochial obligation » concerning the application for the people, what is to be said » regarding past omissions? » RESOLUTION OF THE DOUBTS. — The Sacred Congregation for the Propagation of the Faith, after discussing the questions in the meetings held on March 23, 1803, considered it appropriate to respond as follows: To I. Negatively, provided that it is not a matter of places in which the Episcopal See, and the parishes, have already been canonically established, and to which a Vicarious Apostolic, and Missionaries, have been sent to perform the duties of legitimate Pastors. To II. Provided as in the first. To III. It is to be avoided to use the expression - "obligated by charity"; it

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should rather be said: - "it befits by charity," and that in such a way that the meaning of the aforementioned proper obligation does not appear. To IV. Provided as in the third. To V. Negatively, and reference is made to the decrees of January 28, 1780, and February 5, 1803. To VI. According to what has been explained, negatively, and with the understanding. To VII. To the Reverend Secretary with the Most Holy [Father], regarding the formulas of the doubts, concerning the Eastern Churches, to which the Eminent Fathers in the same Congregation responded, are as follows. Section II. I. « Does the obligation of applying the Mass for the people, which, according » to the law of the Western Church, is imposed upon Bishops and Parish » Priests, likewise apply to the same persons of the Oriental rite? » (1) This doubt, which here comes under number VI, was the cause of IX. Two other doubts from serta, which concerned the manner in which the Vicariate of Surinam should be considered, we left aside, to which the response was: provided as in P*.

[*Latin ed. p. 409*]

ON DOUBTS CONCERNING THE APPLICATION OF MISSIONS FOR THE PEOPLE, 409 "To the extent that it is affirmative." H. "Whether, with regard to the determination of days, reasonable laws and customs that are found to be in force should be observed in some dioceses of the same rite." I I I. "Whether, in the absence of such laws and customs, such a determination of days should be made according to the norm, and in the integral extension of the laws of the West." IV. "Whether, for grave reasons and circumstances, a reduction of the days determined by the laws of the West can be made, and even a total dispensation granted, provided that the obligation of praying for the people is imposed, in those same missions which should be applied for the same purpose."

RESOLUTION OF DOUBTS:

On the same day and year, the Holy Congregation decided to respond as follows:

To I: Affirmative.

To II: Affirmative.

To III: Negative.

To IV: Provided in the third, and in accordance with (1).

FROM THE FOREGOING, THE FOLLOWING CAN BE GATHERED:

I. From the nature of the pastoral office in the Church divinely instituted (2), as the obligation arises of recognizing one's sheep (3), and of feeding them with the preaching of the divine word, the administration of the sacraments, and the example of good works, etc. (4); so also arises the obligation

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of offering a sacrifice for them (5).

(1) The intention of the Holy Congregation was that, according to the circumstances, the obligation of applying a Mass for the people should be imposed upon the pastors of the Eastern Church, even in that Church; and that, with regard to the determination of days, the same should be made aware of the discipline of the Western Church, so that, from this, they might have a standard for determining, until it could be suitable in their own dioceses, and in any case, to propose to the Holy See any modifications that they might deem necessary. Thus, the discipline of the Holy See is wise and just.

(2) John XXI, 15-17. "Feed my sheep."

(3) John X, 11. "I am the good shepherd. The good shepherd giveth his life for his sheep."

(4) 1 Peter V, 2, 3. "Feed the flock of God which is among you, taking care of it, not by constraint but willingly, according to God; neither as lords over the charge, but as ministers of Christ, and keepers of the house of God."

(5) The sacrifice of him who laid down his life for his sheep. John X, 15.

[*Latin ed. p. 410*]

410 CONCERNING DOUBTS REGARDING THE APPLICATION OF MISSIONS FOR THE PEOPLE, part II. This pastoral office, in its entirety, resides in the Bishops by divine right. III. However, according to common ecclesiastical law, a portion of this pastoral office is entrusted to the Parish Priests, which is sufficient in itself and by reason of the manner in which it is entrusted, to generate the aforementioned obligations. IV. For it is entrusted in such a way that, by assuming the parochial office, the Parish Priest becomes the proper pastor of the entrusted flock, although such a pastor and the entrusted flock are subject to the immediate vigilance and pastoral care of a higher order of pastor, who is the Bishop (1). V. Hence, it follows that Missionaries differ greatly from Parish Priests, who, by a mission or delegation from the Holy See, or even from Bishops for their dioceses, are merely heralds of the divine word and dispensers of the mysteries of God. VI. Therefore, by divine right, and even less by ecclesiastical law, Missionaries are not obligated to offer the sacrifice for the people, although they are often compared to those who do, so that they not only offer the sacrifice for the people, but also give their lives for their brothers and sisters. (1) In chapter 9 of the Council of Trent, session XIV, on Reform, the following is stated: "And because dioceses and parishes have been clearly distinguished by the best of laws, and proper pastors have been assigned to each flock, and rectors of inferior churches, who should take care of their own sheep, so that the ecclesiastical order may not be confused." And in chapter 13, session 24, on Reform: "Also, in those cities and places where parochial churches do not have certain boundaries,

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nor do their rectors have a proper people, but administer the sacraments to those who ask for them indiscriminately, the Holy Synod commands the Bishops, for the safer salvation of the souls entrusted to them, to assign a distinct people to certain and proper parishes, and to each his own perpetual and particular parish priest, who may know them, and from whom alone the sacraments may be lawfully received, or in another more useful way, as the circumstances of the place may require. And also, in those cities and places where there are no parishes, the first thing to be done is to establish them." From this concept of the parochial office, it is clear how close is that mutual bond between the Parish Priest and the parishioners, which is often compared analogously to that intimate bond which exists between husband and wife. This mutual bond is the source of rights and mutual obligations, and indeed of the most serious ones, which exist between the pastor and the entrusted flock. These, however, cannot in any way be applied to Missionaries, whose obligations are not derived from the office itself, from common law established, but from an office imposed by the sender, and often voluntarily accepted, or even from charity in the urgent need of the people (not, indeed, in the application of a Mass for the people, as the Consultor has rightly demonstrated), who, by a necessary ministry, are in need of the presence of Missionaries.

[*Latin ed. p. 411*]

iii. The Case of the Impediment to Marriage. September 24, 1864. Summary of the case. Agnes, a young girl from the region of Americae, had been orphaned for some time, and was the youngest of her sisters, having just exceeded the age of thirteen years and four months, when, through the insistent persuasions and urgings of her mother, she was induced to enter into a marriage with a certain Titus. Furthermore, the mother sought to persuade Agnes to enter into this marriage for the reason that she had convinced herself that Titus would secure a considerable inheritance in Lugduni, which had been left to Agnes by her deceased father. However, the young girl consistently showed her aversion to such a marriage. It happened that, before anything had been concluded, Titus was compelled to leave Lugduni, and therefore entrusted the business to his father, so that, if Agnes were inclined to marry, he himself would act as the son in the marriage contract, for which purpose he left behind letters of procuration. The matter proceeded according to Titus's opinion. Therefore, after obtaining, through proper inquiries, permission for the marriage to be celebrated after the required announcements, the sacramental words were pronounced by Titus and the father of Titus, in the name of his absent son, before the Parish Priest and witnesses. After this marriage was celebrated, Titus indeed secured the aforementioned inheritance for Agnes in Lugduni; but, forgetting any marital duty, he broke off all communication. For, traveling throughout Europe, pursuing lost women and gambling, and squandering Agnes's

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inheritance, he seems never to have returned to America. Therefore, the unfortunate girl, deprived of her possessions, and appearing neither free nor married, turned to her Archbishop, imploring him to declare the marriage contract null and void. After some deliberation and investigation, and through proper legal proceedings,

[*Latin ed. p. 412*]

412. OF MARRIAGES. In Rome, a young woman, along with her suitor, petitioned that the Most Holy Father grant a dispensation, at least concerning the matter of marriage itself. Then, these petitions, along with supporting documents, were submitted for examination to the Holy Congregation of the Council; however, several things were lacking, which, according to the prescriptions of the Holy Canons and the Constitution of Benedict XIV, beginning with the words "Dei miseratione," must be observed in order to properly complete this process. Specifically, judicial interrogations were lacking, both for Agnes and for Titus; there were lacking testimonies, which in law are called "testimonia septimae manus," from the spouses' relatives (1); and finally, the presence of a Defender of the Bond was lacking.

In Chapter 1 of the title concerning witchcraft and sorcery, the following is inserted: "But if they confess that 'they have never known each other,' let the relatives, or, if relatives are lacking, those who have been touched by the sacred Gospels, be questioned by the 'testimonia septimae manus'..." Also, at the end of Chapter 7 of the same title, the following is read: "Concerning this, we command that, if it has been established to you that the aforementioned man and woman have lived together, let them, with the solemn oath of seven witnesses from each side, affirm that they have not been able to have carnal intercourse with each other; then, pronounce the sentence of divorce between them."

Therefore, for the complete process, of which we are speaking, according to the Holy Canons, especially when the consummation of marriage is in question, the testimony of the "testimonia septimae manus" is required, which is nothing other than a sworn attestation from seven witnesses from each side, that is, fourteen relatives or neighbors. It is called "testimonia septimae manus" because it is like an aid to confirm what the spouses have sworn under oath, and to prevent collusion, which could occur between the spouses themselves. For the spouses could act in court, through deceit and collusion, to deceive the judge, in order to obtain a sentence favorable to their own freedom, while in reality they are bound and ought to remain bound by the marital bond.

To avoid these things and to increase the evidence (for we are dealing with a serious matter, in which all possible precautions must be taken, as noted by the Glossary in the cited chapter 7), the relatives or neighbors of each spouse must be heard in court; these are those who, through custom, conversations, and other means, can better than others know the way of

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life of the spouses, and what occurs within their homes. For this reason, in order to prevent fraud and collusion, and to overcome them, Benedict XIV prescribed, in a very salutary Constitution, that a Defender of the Bond must be present in these cases. For it is very easy to find cases in which a man and a woman appear to be arguing, although in reality they may be colluding, since the other party with whom they are arguing is absent, namely, the one who represents the rights of the marital bond against which the spouses are acting; and therefore, it has been decreed that in such cases, a Defender of the Bond must always intervene, who, as is fitting, will insist on and argue for the validity of the marriage.

The necessity of such a Defender is also evident in other cases that have some similarity to marital cases, such as those cases in which the nullity of a religious profession is alleged.

[*Latin ed. p. 413*]

MATRIMONY: Concerning the matter of matrimony, which, according to the aforementioned Constitution of Benedict XIV, ought to be brought before these judicial proceedings, etc. Therefore, a decree was issued to the Archdiocesan court, so that, regarding the deficiencies in the proceedings transmitted to it, a supplementary process might be instituted, and likewise, a decree was issued to the Prelate of Paris (for it was rumored that Titus resided in Paris at that time), to appoint a Defender of the Marriage, and, with all due legal formalities observed, to examine Titus, through interrogations to be conducted by the aforementioned Defender, concerning both the alleged grounds for nullity, and also concerning the grounds for a dispensation from the marriage, and that the completed examination, in proper and authentic form, should be submitted to the Holy Congregation. On the part of the court, a supplementary process was completed and transmitted, which was conducted before the Vicar General, and the Defender of the Marriage specially appointed: Agnes was indeed questioned, after having taken an oath to speak truthfully, concerning the grounds for nullity, and for a dispensation from the marriage, and specifically concerning the non-consummation of the same marriage. Furthermore, the proposals of Agnes were received, in which she indicated concerning whom she believed it necessary to question her mother, and other individuals named by her, regarding force or coercion, and the non-consummation. The Archbishop, however, made his judgment clear with these words: "Regarding those things which appear to have been proven by the petitioner, concerning the nullity of the marriage she contracted, nothing can be added by me; because the force and coercion, of which she speaks, were only carried out within the domestic setting." "And concerning the dispensation, I believe it to be, as it were, necessary for the salvation of the spouses; for their marital union has become impossible..." "Indeed, for a dispensation to be granted, there cannot be any doubt concerning the validity of the marriage, nor in

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any way concerning its consummation; because the absence (of Titus) from this region, from which the marriage was contracted through a procurator, is entirely well known, due to the reason for which he was compelled to be absent..." Furthermore, according to the Constitution of Benedict XIV, a Defender of the sacred order is to be appointed when he who is to take the vow is required to have a Defender, who will safeguard the rights of the religious order, against those who are opposed to the vows, or against the burdens which the religious undertakes. Likewise, through the same, he is to contend in matters pertaining to the order. Regarding a certain extension, due to the similarity of causes, see, if you wish, the cases which we have cited in the *Summa*, page 25, and page 328.

[*Latin ed. p. 414*]

414. MARRIAGES. The Archbishop of Paris, Titius, could not be found in Paris, and therefore it was necessary to publish notices in public newspapers, so that he might appear before the Sacred Congregation C., within a specified time; which, however, proved fruitless. Nevertheless, learning that his case was being considered by the Apostolic See, Titius sent a petition, duly authenticated by the Parisian court, in which he requested that the Holy Father grant him only a dispensation from marriage. The sworn testimonies, however, are reduced to these points. Witness A., a woman of 30 years of age, testified in court: "It is known to me that Agnes' mother treated her daughter severely, and that Agnes' daughters had no will of their own in any matter; on one day, shortly before the marriage celebration, for a trivial reason, the mother gave Agnes and another daughter slaps, so that they wept; Agnes married at the age of 13 years, more than four months; I did not observe any love in Agnes towards Titius, although I often and familiarly associated with Agnes; I was present one day when Agnes refused to speak to Titius when he asked her to be his wife, and I heard that, because of this rejection, Titius, while carrying Agnes' belongings from her house to his own, threw his hat into the river; I received from a certain man, who had been accustomed to travel in Europe with Titius, information that Titius had entered into other marriages with European women, and that he was a man of dissolute morals; it is known that Agnes' marriage was not consummated, because Titius never returned, etc." The other witnesses who were brought before the court, in unison, testified that Titius, after leaving the United States, never returned there, nor did Agnes leave her city, and they presented this as a well-known fact; moreover, they expressed compassion for poor Agnes, both because of other reasons and because of the danger of incontinence. Regarding the matter of coercion, they testified as follows. Witness R., who had been friends with both families for many years, declared: "I am convinced that Agnes' mother exerted violent coercion upon her daughter to complete the marriage, because of her slowness and also because of Agnes' resistance, who, with blind obedi-

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ence, followed her mother's commands."

[*Latin ed. p. 415*]

MARRIAGES. 415 Witness C, who knew the family of Agnes, testified: "That he had learned from Agnes' mother that her daughter had been married, against her will, through obedience, although she detested such a marriage." Witness D, who had known the family of Agnes for only four years, testified based on hearsay: "That threats had to be made by me in order to make Agnes consent to the marriage." Finally, another witness, Titian's nephew, stated only that "Titian never returned, and Agnes never left her homeland; as for the rest, I know nothing." The testimony of the mother is given below. Agnes, under oath, affirmed: "That she had been forced to give her consent to the marriage because of the absolute command of her mother, and that she had bowed her head, but not her will; and that the marriage had never been consummated." Therefore, after the doubts had been carefully examined according to the custom of the secretariate of the Sacred Congregation, both sides, first the woman and then the marriage, were argued according to the following reasoning. [Synopsis of the argument. DEFENSE OF AGNES REGARDING THE FIRST DOUBT.— Agnes' defender, after making certain preliminary remarks about the external form of the proceedings, then proceeded to the merits of the case, drawing from the testimonies of the witnesses that Agnes had been subjected by her mother, of severe character, to coercion, threats, punishments, and humiliations in order to induce her to enter into the marriage, and that the mother herself, in her own defense, had confirmed all of this under oath, namely: "That she had abhorred the marriage of Agnes with Titian, and that she had compelled her to consent through punishments and confinement; that her daughter had been reluctant until the very end; that she had abused her maternal authority; and that her own character was severe, and that she demanded absolute obedience from her daughters; that Agnes, being the youngest, had been unable to resist the will of her mother, who was of a meticulous nature." Furthermore, the defender added, there had been tricks and artifices used to deceive Agnes, such as the order given by Titian to his father to seize the opportunity and, in the name of his son, contract the marriage; and the dispensation obtained after the required publications, so that the unwilling girl would be subjected to a perpetual yoke without delay. All of this was done against an orphan, a young girl.

[*Latin ed. p. 416*]

I.6. OF MARRIAGES. It contended that a timid disposition, or a lack of firmness, was sufficient to constitute a grave fear or coercion, whereby a marriage is rendered null. For this fear, even if it is considered to be reverential, if it is grave, weakens the marriage. Reiffenstuel, *Lib. 3 decret., lit. 31, De Regni*, § 165. *S. Rota decis. 23 part. 12, § 12 et seq.*, in which

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a similar cause of marriage is found, which was declared null because of such fear, as is read therein: "For the nullity of marriage (by force and fear), much attention must be given to both the quality of the person inflicting it, and the fear of the patient; as in the case in question, the adoptive parents were urging Angelmann to marry. But there is no doubt that, due to the due reverence owed to them, Angelmann's freedom to openly dissent from such a marriage was removed, so that it may be said to have been contracted by force and fear. Angelmann was a girl of 13 years of age, and without any other support. In the interpretation of just fear, there is a distinction between a man and a woman; because less fear is required in her than in him; the *Glossa* says... and in a girl of tender age, less fear suffices than in one of adult and perfect age; and furthermore, the excessive aversion and repugnance of Angelmann, both before and after the marriage, to taking Lucius as her husband, clearly indicate fear and violence. This will also was intended to be made clear to the parents themselves, so that they might be dissuaded from such a proposal. To this was added the harshness and cruelty of Margaret, who, as the witnesses say, was also accustomed to carry out threats; nor did the importunate solicitations and prayers of Jerome, likewise issued by a person to whom reverence was due, fail to instill just fear, and have the force of coercion, and on the contrary, the obedience and reverence of the girl towards said adoptive parents, which quality is very considerable, etc. Furthermore, *S. C. C. in Limen, Sarzanen, 22 June 1833, §*, and elsewhere. Moreover, the Defender demonstrated that there was no lack of such coercion, even during the very act of celebration, from the sworn testimony of Agnes herself; nor from the questions put to Agnes by her mother, namely: "My mother did nothing to ascertain my will, nor did she inquire about the age in which I was... and how, when I resisted this marriage, was I threatened, and was I not induced by the fear of punishment to say before the..."

[*Latin ed. p. 417*]

MARRIAGES. 417 "I was the one who received the nuptial blessing, and I 'desired' that union which I had previously rejected and which, by natural instinct, I did not want." This was confirmed by the Defender of the Marriage with opportune testimonies of witnesses. Furthermore (he continued), as long as the same cause and reason for the imposed fear persist, the imposed fear must also be considered to persist, *De Iustis De dispens. Matrim. I. 2 c. 12 §. 61 Reiffenstuel L. 1 Decret, tit. 40 n. 102*. However, the Defender maintained that, for many others of equal learning, the fear had not been purged by the subsequent consent of Agnes; nor could it have been purged, according to the doctrine of the Sacred Congregation of the Council, as explained in Caesena, April 10, 1728.

(1) WHAT WAS OBSERVED BY THE SAME DEFENDER

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REGARDING THE SECOND DOUBT.

Proceeding then to the second formula of the doubts, he carefully considered that two things must be demonstrated simultaneously in order to obtain the requested dispensation: the first is that it must be demonstrated that the marriage was never consummated, but remained only valid; the second is that there must be just causes for the dispensation. He demonstrated the first point from the judicial confession of all the witnesses, who, with one voice, testified that Titus had never visited his ancestral home, had never returned to America; and that this fact was known publicly and notoriously, to which, as a crowning testimony, the testimony of the Archbishop was added. With such a limitation of time and place, no other proof is more valid. Therefore, he concluded, in the present case, no other proof is required, which would otherwise be necessary, if such a limitation of time and place were not present (Ursaya Tom. 3 dis. 23 n. 140 and apud S. C. C in Chien. Matrimonii, December 15, 1792 §. Matrimonii, January 27, 1844, and elsewhere). He demonstrated the second point from the facts recounted thus far. If what has been explained did not suffice to demonstrate the fear to the extent required, no one will deny that it at least raises a serious doubt about the validity of the marriage. But that fear, which is considered less suitable for demonstrating the validity of the marriage, (1) This doctrine has already been explained in the case of Jeta, vol. I, fol. sc. VII Matrimonii, page 23 §. Repellebat, 27.

[*Latin ed. p. 418*]

413. MARRIAGES. A cause sufficient for obtaining a dispensation is declared to be the declaration of nullity, as stated in Bracharen, Matrimonii, January 25, 1823, §. In medium. Indeed, the added cause of nullity provides grounds for granting a dispensation. Moreover, in the present case, other special reasons are present, such as the immoral conduct of the man, which was incompatible with the virtuous behavior of the young woman; and also, the just and most grievous aversion of the poor Agnes, which grew stronger with each passing day. Therefore, any marital union could be reasonably hoped to be frustrated. However, the Defender of the Marriage argued that such causes are, in themselves, suitable for obtaining a dispensation. January, Dispens. April 27, 1844, §. Altera. DEFENSE OF THE MARRIAGE REGARDING THE FIRST DOUBT. — On the contrary, the Defender of the Marriage initially pointed out that the acts of the process could not be considered valid, because, after the supplement to the process was ordered by the Sacred Congregation, they were hastily repeated and accepted by the Defender of the Marriage. It was necessary to restore the acts with their substantial form. For what is defective from the beginning cannot be healed by the passage of time. Furthermore, he observed that the process acts still lacked the required inspection and the testimony of seven witnesses. The stepfather of Agnes could have been called to testify,

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as could his friends at the time of the marriage, as well as the father and brothers of Titus, etc. Regarding the merit of the cause, he stated that a marriage contracted according to the Tridentine form cannot be declared invalid unless it is clearly demonstrated that there was force and fear of such a nature that a steadfast man, determined in his purpose, would not be able to resist it, and that this force and fear were unjustly imposed in order to obtain consent to the marriage. Furthermore, he argued that such force and fear could not be demonstrated in any way from the acts. He stated that not every trace of fear, not natural timidity, and not the habit of an imperious will, constitutes that fear. He believed that the fear of which the witnesses spoke was entirely slight. Moreover, he considered that the same witnesses were subject to various objections. The testimony of the mother was considered suspect, given the present condition of her daughter, and because it was given out of guilt and shame; while other witnesses were objected to, either because they did not testify from their own knowledge, or because the violence of which they testified was not sufficiently grave.

[*Latin ed. p. 419*]

MARRIAGES. 419, it has not been, and it has not been brought about to extort consent to marriage. Furthermore, he added that, although it may be said that reverential fear can weaken marriage, such fear, with serious consequences, ought to be a deterrent, as Scripture says, "The Lord separates the soul" (Sirach I. 1, chapter 8). 72 and following. Clericatus, decree 37 on marriage, number 24, in which he writes: "Reverential fear is considered in two ways, either with the danger of some great evil, or without danger. In the first way, when a son, or daughter, disobedient to the will of his father, or another inferior not obeying the commands of his superior, fears that he will render him angry, or contemptuous, or even threatening, and not speaking calmly, and all the more if he hears him uttering reproachful words, or threatening blows or stripes, or promising other changes in himself, all of which are considered to be great and unbearable evils in the son. In the second way, reverential fear is considered without danger, namely, when a daughter or subordinate, not obeying her father, or her superior, experiences indeed some shame and modesty; but knows that her parents, or superiors, will not keep indignation, nor will they proceed to any vengeance, or punishment; indeed, they are easily appeased, as the Salmanticenses say in chapter 9, number 53, where, after these observations, they say that reverential fear, considered in the first way, is a hindrance to marriage; not also, according to the common opinion of the Doctors, whom Sánchez follows, etc. Having expounded this doctrine, the Defender of the marriage asserted that, in the present case, the reverential fear was considered in the second way by the Clericatus. For there was nothing for Agnes to fear from her most loving mother, who had a very good heart for her orphaned daughter.

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THINGS OBSERVED BY THE DEFENDER OF THE MARRIAGE REGARDING THE SECOND DOUBT. — Proceeding to the second doubt, the Defender of the marriage argued that it could not be asserted that the marriage was still valid, because the passage of time and the circumstances did not sufficiently demonstrate this. Indeed, it seemed unlikely that Titus had never left Paris within a period of ten years, on an easy journey.

[*Latin ed. p. 420*]

420 MARRIAGES! Approximately thirty days were spent, so that he might greet the Nativity, his parents, and his desired bride. And the Defender was put on suspicion, because Agnes had refused to have the inspection carried out by honest matrons. However, concerning the matter of the dispensation, the Defender, citing the authority of Schmalzgrueber, *Ius. can. univ. par. 4 tit. 19 n. 53*, which affirms that a grave reason is required, denied that such grave reasons were present in this case. For, he maintained, there was no fear, which at least might introduce doubt concerning the validity of the marriage, and he considered the assertions of the witnesses concerning the bad character of the man to be made without reason. Furthermore, there was no grave reason for aversion and hatred, which should not be artificially contrived. In light of these circumstances, he concluded that the matter should not proceed to a dispensation, citing various alleged examples. These and other points were extensively debated by the Defenders. The questions to be resolved are: I. "Whether there exists a nullity of the marriage in this case." "Or rather," II. "Whether it is necessary to consult with the Most Holy [Father] concerning a marriage that is valid, and [one that is] not consummated, in this case." RESOLUTION. The Holy Congregation of the Council, having knowledge of the case in its meetings on September 24, 1864, decided to respond as follows: To I. Provision will be made in the second [question]. To II. Affirmative, and to the Secretary with the Most Holy [Father], both concerning the dispensation and concerning the correction of actions. From this, we gather: I. That, considering the gravity of matrimonial causes, more, and especially solemn, formalities are prescribed, both by the Holy Canons and specifically by the Constitution of Benedict XIV, which begins: *Dei miseratione* (By the mercy of God) (1). II. That the proceedings of the case are invalid if at least the substantial formalities prescribed are not observed. (1) See the appendix... in which is referred to the general instruction of the S. C. C. [Sacra Congregatio Concilii - Holy Congregation of the Council]; it is very useful and should be kept in mind by those who are obliged to institute such proceedings.

[*Latin ed. p. 421*]

MARRIAGES. 4-21 III. Among such substantial solemnities, the intervention of the Defender of the Marriage holds a preeminent place, directing the

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judicial proceedings in a certain manner, according to said Constitution. IV. Therefore, proceedings completed without the intervention of this Defender are not validated by a subsequent simple ratification, or by recognition made by witnesses, even if the aforementioned Defender is present. V. Such validation, however, can sometimes be granted by the Apostolic See, if, considering the acts and the truth of the matter, the defects of the process are referred only to the external form. VI. In the present case, although not all the prescribed solemnities were strictly observed (1), nevertheless, those that were observed, considered solely in the light of the truth of the matter, were deemed sufficient to render a judgment on the second doubt. VII. Furthermore, in order to obtain a dispensation from marriage, it must be clearly demonstrated simultaneously that the marriage has remained valid, and that grave causes exist for its dissolution. VIII. Among the grave causes, coercion undergone in entering into the marriage is counted, although such coercion is not sufficient to declare the marriage null. IX. In the present case, since the aforementioned coercion also coincided with the unfortunate situation of the girl, in which, having lost her possessions due to the malice of the man, she did not appear to be either free or married. (-1) The process consisted of prior acts completed without the intervention of the Defender, and of subsequent acts with the Defender present, although the prior acts were recognized under oath: the examination of relatives or neighbors of Titus was lacking; the examination and oath of Titus himself were lacking.

[*Latin ed. p. 422*]

422 FROM THE APOSTOLIC PENITENTIARY, ANSWERS, OF THE APOSTOLIC PENITENTIARY, CONCERNING FASTING AND ABSTINENCES. Considering the approaching Lent, we believe it useful to place before the eyes of our readers a certain series of Answers from the Holy Penitentiary, which concern fasting and abstinences from food, although many things are already well known, and have been published in other periodicals (1).

(1) In learned Italian periodicals, entitled "Archivio dell'Ecclesiastico," most of which are found in the 2nd volume. These ecclesiastical periodicals, of which the third year has now begun, have been deemed worthy of commendation by the Roman Pontiff himself, who, in letters given to the Director of these periodicals on February 24, 1864, wrote among other things: "It is necessary that the faithful, and especially the younger clergy, be so instructed that they may feel and demonstrate full devotion and obedience to the Chair of Peter, and that they may hold this Holy See to be that cornerstone, by means of which truth may be distinguished from error. Therefore, with Your guidance, we commend Your plan to publish Your periodicals, with which, in this precarious condition of human society, You propose to instruct the growing clergy in the study of truth, in morals and

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in science; we highly commend Your plan, and we gladly and gratefully accept the beginning of this work."

These periodicals, therefore, propose as their main objective the advancement of young ecclesiastics in various sciences, and in knowledge that is opportune and necessary for more effectively performing priestly duties, especially considering the conditions of the times in which we live. It is known that young priests leaving the seminaries and engaged in the sacred ministry, find it difficult to cultivate the sciences they touched upon in those same seminaries, either due to lack of time, or of resources, or even of encouragement to pursue sacred studies; and they are even less able to acquire documents and more recent knowledge, which, while contributing to the progress of science and greatly stimulating it, at the same time offer remedies by which, in this deplorable condition of society, they may somehow resist these great calamities.

These matters, elegantly and accurately explained, are found in the monthly fascicles of "Prodit Florentiae." In the first part, topics pertaining to ecclesiastical matters are treated; the second part is occupied by a bibliography; the third part contains religious news, and especially decisions or decrees of the Holy Congregations. To these parts is added an appendix, in which are recorded, in chronological order, the principal events that relate to ecclesiastical history: briefly, or synoptically, as appropriate.

[*Latin ed. p. 423*]

RESP. S. APOST. POENIT. ON FASTING AND ABSTINENCE 423. We preface this with seven questions, which were proposed to the Most Holy Benedict XIV, and answered by the same, which are read in the documents given to the Archbishop of Compostellae on June 10, 1745, and are as follows:

I. "Whether those things prescribed in our aforementioned documents, in the *forma* of a single meal, and regarding meals that are not mixed, are to be prohibited under a serious precept?"

Resp. Granting the faculty of eating meat during the prohibited time, we do not grant these same faculties in any other way, except with these two conditions attached, namely, only for a single meal in the day, and that the meals are not mixed. Those who make use of such faculties are to be obligated under a serious precept to observe both of these conditions.

II. "Can those to whom it has been granted to eat meat, partake of meat in the evening meal in such a quantity as is permitted to those who are fasting?"

Resp. It is not permitted, but they must have that food, and use that portion, which those who are fasting use, with a right and scrupulous conscience.

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III. "Must those who are permitted to eat meat during the time of fasting, and to take a single meal, observe the hour prescribed to those who are fasting?"

Resp. It must be observed.

IV. "What are the permitted meals, which are prohibited, when joined with the prohibited foods?"

Resp. The permitted meals for those to whom it is permitted to eat meat, are the meat itself; the prohibited meals are fish, and therefore both cannot be used together. However, those to whom only the faculty of using eggs and dairy products is given, are not prohibited from eating fish.

Public notices and documents are published, which the Ordinary of each place communicates to the Direction of these publications; furthermore, account is taken, as accurately as possible, of matters relating to Italy, as far as is sufficient for ecclesiastical purposes, etc. Six fascicles complete the volume, consisting of at least 576 pages. The annual price of membership throughout Italy (except for the territory of Venice) is 10 francs; the price for a semester is 6 francs; outside of Italy, a higher price must be taken into account due to the greater expense of sending the fascicles. Memberships begin in January and July. Those who wish to join should send letters with the price of membership, written as follows: "To the Administration of the Archive of the Ecclesiastical, Via dei Servi n. 9, Florence, and if necessary, Italy."

[*Latin ed. p. 424*]

424 RESPONSE. S. APOST. PENITENTIAL. ON FASTING AND ABSTINENCE. V. "Does the precept concerning both kinds of food extend also to Sundays of Lent?" Response: It does. VI. "Does this law also apply to those who, by a decree [Bulla], are permitted to eat eggs and dairy products?" Response: Nothing in our Apostolic Letters has been established that pertains to the gracious Decree [Bulla] concerning the Cross. Therefore, those who enjoy this privilege should strictly and carefully observe its terms, and conduct themselves according to its dictates. However, they should take care not to consider themselves excused from the laws prescribed therein by some empty pretext. VII. "Do the aforementioned two precepts apply outside of Lent?" Response: Both precepts apply outside of Lent: that is, the precept concerning a single meal, along with the other laws mentioned in the second and third questions, as expressed in the response given above; and the other, concerning not mixing permitted foods with prohibited foods, as defined in the fourth question.

THE FOLLOWING ARE FURTHER DECLARATIONS ISSUED BY THE HOLY PENITENTIARY.

1. "Is it permissible, on days of fasting, to invert the times of meals, by

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taking a late refreshment before the tenth and eleventh hours [i.e., 7:00 and 8:00 AM], and postponing breakfast until the fourth and fifth hours [i.e., 11:00 AM and 12:00 PM], and supper until the evening?" Response, given on January 19, 1834: If there is any reasonable cause for the aforementioned inversion, those who are fasting and who use this practice should not be troubled.

2. "Can fathers of families, when there is someone in their own family who has been granted a dispensation regarding the use of meat, extend that dispensation indiscriminately to all persons in the same family?" (1) Response: Infirmity and any other reasonable impediment, with the advice of both physicians, and not gluttony or avarice, (1) In Italian, the question was phrased as follows: "Whether fathers of families, when there is someone in the same family who has been granted a dispensation to eat fatty foods, can extend the dispensation indiscriminately to all individuals of the same family."

[*Latin ed. p. 425*]

RESPONSA APOSTOLICA PENTITENTIARIA REGARDING FASTING AND ABSTINENCE, 42, or, generally, a summary of expenses, concerning the dispensation from the precept of abstinence on days designated for it.

3. "During Lent, if the father of a family has the faculty of eating meat, and if he does not prepare two meals, one containing meat and the other in accordance with the law of abstinence (in Italian, *di magro*), may the children of the family, and others subject to his authority, eat meat?" The Sacred Penitentiary responded on January 19, 1834: "It is permissible for those who are under the authority of the father of a family, to whom a legitimate faculty for eating meat has been granted, to partake of the food granted to the father of the family, with the condition that permissible and prohibited foods not be mixed, and that those who are obligated to fast have only one meal in the day."

4. "Is the meaning of the words of the Sacred Penitentiary – 'It is permissible for those who are under the authority of the father of a family, to whom a legitimate faculty for eating meat has been granted, to partake of the food granted to the father of the family, etc.' – such that, if the father of the family has been granted a dispensation, the other members of the same family are also to be considered dispensed?" The Sacred Penitentiary has never declared that dispensations granted to the head of the family extend to the entire family; but it has only given directions to confessors in practical matters concerning those who are under authority, and who must eat the food provided by their parents (t).

5. "Is the reason why the children of the family may eat the foods forbidden by the father of the family, due to their physical or moral inability to observe the precept; or rather, is it due to the dispensation granted to the father of the family?" The reason for the permission, about which the

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question was posed, is not the dispensation granted to the father of the family; but rather, the inability in which the children of the family find themselves regarding the observance of the precept.

6. "Can the children of the family eat meat during the prohibited time, presupposing such a faculty in their parents, or in one of them; and, in the affirmative case, can the children eat meat without offending their conscience, considering that they find themselves in a situation where two meals are being prepared (2)?"

(1) The responses given by the Sacred Penitentiary are usually certain norms that confessors should use, applying them to cases according to the variety of circumstances.

(2) In Italian, this question was expressed in a somewhat confusing manner: "Can the children of the family eat meat during the prohibited time, presupposing their parents, or one of them, have such a faculty; and in the affirmative case, can the children eat meat without offending their conscience, considering that they find themselves in a situation where two meals are being prepared (2)?"

[*Latin ed. p. 426*]

426. DECREE OF THE HOLY APOSTOLIC PENITENTIARY CONCERNING FASTING AND ABSTINENCE. The response was given on April 20, 1865: Negatively: concerning speculative matters, but in practice, the confessor is bound to judge.

7. "Can those who are dispensed from observing the fast because of 'the exercise of a laborious art' during Lent, to whom an Indult has been granted allowing them to eat meat and dairy products (for a single meal), use meat and dairy products as often as they eat during the day, just as on Sundays, on which days fasting is not prescribed?"

The Holy Penitentiary, by order of the blessed memory of Pope Pius VII, responded: "The faithful, who, because of their age or labor, are not bound to fast, can licitly, during Lent, with the Indult granted, eat meat or dairy products, permitted by the same Indult, as often as they eat during the day, on all days included in the Indult." Given in Rome, in the Holy Penitentiary, on January 16, 1834.

8. "Most Eminent Prince – Certain priests of the kingdoms of Belgium and Holland, for the tranquility of their consciences, and for the certain direction of the faithful, urgently request from Your Eminence a solution to the following doubts:"

Gury, Scavini, and others report the following as responses of the Holy Penitentiary, given on January 16, 1834: "It is permitted to those who are under authority, namely, the head of the family, to whom a legitimate permission has been granted to eat meat, to use the foods permitted to the head of the family, with the condition that licit and forbidden foods

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not be mixed, and with the condition of a single meal per day for those who are bound to fast. Therefore, it is asked: I. "Does this resolution apply everywhere?" II. "Since it is said that it is permitted, is it requested from whom this permission must be given, and is the permission given by a simple Confessor sufficient?"

Another resolution: "The faithful, who, because of their age or labor, are not bound to fast, can licitly, during Lent, with the Indult granted, eat meat or dairy products, permitted by the same Indult, as often as they eat during the day, on all days included in the Indult."

"Therefore, it is doubted whether this resolution applies in a diocese, in which the Bishop, by Apostolic authority, grants to the faithful the permission to allow their children to eat fatty foods without offending their conscience, and if they are to be allowed two meals?" However, the response of the Holy Penitentiary is clear.

[*Latin ed. p. 427*]

RESP. S. APOST. POENIT. CONCERNING FASTING AND ABSTINENCE. Regarding the second and fifth days of the season of Lent, it is permissible for some to eat meat and eggs once in a day; but those who, by reason of age or labor, are not obliged to fast, are permitted to use eggs more frequently in the day. "Therefore, it is asked: I. Whether, notwithstanding the aforementioned phrase, those who, by reason of age or labor, are not obliged to fast, may use eggs more frequently in the day, and whether, by virtue of this concession, those who are not obliged to fast by reason of age or labor, may, by the force of this resolution, eat meat as many times as they eat in a day?" II. "Whether those who are not obliged to fast by reason of age or labor, are to be considered equal to those who are excused from fasting by reason of infirmity, so that even these may eat meat more frequently in the day?" "The Holy Penitentiary, having maturely considered the proposed questions, responds first to the esteemed Orator, transmitting a declaration previously issued by the Holy Penitentiary, namely: 'The reason for the permission, concerning which the resolution given by the Holy Penitentiary on January 16, 1834, is not a paternal indulgence granted to the family, but the inability in which the members of the family find themselves to observe the precept.'" "Then, it responds to the two previous questions: Regarding the first, affirmatively; regarding the second, it suffices to grant permission from a simple confessor." "Regarding the two subsequent questions, it responds: Regarding the first, negatively (1); regarding the second, they are not to be considered equal (2)." Given in Rome, in the Holy Penitentiary, on May 27, 1863. (1) This response deserves special attention. Pope Benedict XIV, in his response to the first question proposed by the Archbishop of Santiago de Compostela, responded: "Granting the faculty to eat meat during the prohibited time, We must strictly insist that these same faculties

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be granted only under two conditions: namely, that they eat only once in a day, and that they do not participate in lavish feasts. Those who make use of such faculties must be strictly obligated to observe these two conditions." Therefore, assuming the granting of this indulgence to which a new limitation has been added, the response of the Holy Penitentiary given on January 16, 1834, as mentioned above, applies. But if the new limitation does not constitute an indulgence, as in the present case, in which the Bishop, by Apostolic authority, has permitted only that those who, by reason of age or labor, are not obliged to fast, may use eggs more frequently in the day, then the aforementioned response does not apply to that part which permits the use of meat as many times as they eat in a day. (2) The reasons why they are not to be considered equal are as follows: Those who are excused from fasting by reason of age or labor may use prohibited foods only by virtue of an indulgence, which may be subject to greater or lesser limitations; whereas, on the other hand, the infirm may use prohibited foods according to the state of their own health, and the judgment of a physician. Thus, for example, on some days the indulgence might not extend to certain foods.

[*Latin ed. p. 428*]

428. RESP. S. APOST. POENIT. CONCERNING FASTING AND ABSTINENCE, QUESTION 9. "Whether those who, by reason of age or labor (and also by reason of weakness and infirmity), are not bound to fast, are subject to the law concerning the mixing of meats and fish, when meats are permitted by dispensation." Answer, dated February 13, 1834: Consult approved authors.

10. "The confessor asks the Holy See: whether to those to whom the eating of meats is permitted on Fridays and Saturdays throughout the year, in which the obligation of fasting is not observed, the mixing of foods is permitted, notwithstanding the response of Benedict XIV to the Archbishop of Syracusanum, issued by the Secretariat of Memorials on January 5, 1755." "The Sacred Penitentiary, February 15, 1834, having carefully considered the question, and having reported it to the Most Holy Pope Gregory XVI, responded according to the mandate of his Holiness: It is permitted."

11. "Whether, on the days of fasting, during the time of Advent prescribed by Pope Pius V, in which dairy products are permitted, and to whom the use of meats is permitted because of infirmity, the mixing of meats and fish is forbidden." Answer, January 8, 1834: Affirmative, namely, such mixing is not permitted.

12. "Whether the law forbidding the mixing of meats includes dried fish (commonly called *salumi*, that is, anchovies, mackerel, caviar, herring, *tarantella*, and other similar things); or rather, whether they can be mixed as a condiment for another dish." Answer, January 16, 1834: Dried fish should not be mixed with meats, whenever the mixing of meats and fish is

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forbidden.

13. "Whether, during the time of fasting, to whom the use of meats is permitted, marine shellfish, which are improperly called 'sea fruits,' but are commonly considered fish (that is, oysters, clams, scallops, mussels, crabs, etc.), are forbidden to be mixed." Answer, January 16, 1834: Marine shellfish, which are improperly called 'sea fruits,' but are commonly considered fish, should not be mixed with meats, whenever the mixing of meats and fish is forbidden.

Regarding condiments: in the case of those who are dispensed from fasting by reason of age or labor, they must abstain from condiments. In the dispensation, it is understood that the infirm person may eat meats if it is required by his health. These considerations, after consultation with the Sacred Penitentiary, were communicated by Cardinal Barnaba to the Bishop of Suthwarsen, in letters dated March 8, 1864. These are consistent with what we have stated above.

[*Latin ed. p. 429*]

RESP. S. APOST. POENIT. SUPER IEIUNIO ET ABST. 429 14. "Those to whom the quality of food is permitted, can they during the days of fasting partake of a small portion of meat, in order to consider their health, and furthermore, can they use foods that satiate hunger, so that, as far as possible, they may obey the precept concerning food?" Resp. February 8, 1828: Affirmative. 15. "Whether during the time of fasting, the mixing of meat with vegetables is permitted." Resp. It is certain that meats can be mixed with any kind of vegetables. 16. "Whether those to whom the eating of meat is permitted on certain days, who use only dairy products, can use rendered fat (lard) liquefied." Resp. February 8, 1828: Affirmative. 17. "Whether, when, either through a dispensation from the Bull of Cruciatae, or for some other reason, an indulgence is granted for the use of rendered fat (commonly lard) solely as a condiment, those who are bound by fasting can lawfully use that condiment even in the evening meal." "The Sacred Penitentiary, on January 16, 1834, in response, with express reference to the oracle of the Most Holy Pope Leo XII, answered that those who are bound by fasting can lawfully use, even in the evening meal, condiments permitted by the indulgence, because, by virtue of the indulgence, they take the place of oil; provided that there is no restriction in the indulgence that these condiments can be used in only one meal." 18. "Whether in the granting of condiments (commonly 'di grasso'), is understood the granting of the use of a condiment made from the fat of any animal?" Resp. Only a condiment made from pork should be used. 19. "Whether, on the days of Friday and Saturday, on which condiments commonly called 'di grasso' are permitted, a small portion of meat can be used." R. Under the terms of a condiment called 'di grasso,' cooked meat is not included (1). (1) It should not be surprising if some responses of the Sacred Penitentiary are

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found without a date, especially if they are ancient. In the records of the Sacred Penitentiary, decisions are distributed according to the order of the subject matter, and it is sufficient that the response is found written there, so that its authenticity is established. Indeed, the responses that have a date are often older than the date they bear; for they are often repetitions of responses that are found in the records without a date. And, when it is a matter of internal affairs, great care must be taken regarding dates, and the suppression of dates helps to preserve the secret that must be kept; and many things in the office of the Sacred Penitentiary, for the reason of this said secret, are not recorded in the records at all.

[*Latin ed. p. 430*]

430 FROM S., THE CONGREGATION FOR INDULGENCES, CAMBRACENSIS. August 29, 1864. "Since in the city, commonly called Tourcoing, within the Archdiocesis of Cambray, it is the custom of some pious mothers to have the sacred Scapular imposed upon their children, even those who have not yet attained the use of reason, the Superior of the house of the Religious Society of the Missionaries of Mary in that same city, doubting the validity of such imposition, inquired: Whether this imposition of the Scapular is sufficient, so that the children, when they attain the use of reason, may be able to enjoy and avail themselves of the indulgences and other privileges granted to those who wear it." The Holy Congregation, in general meetings held in the Vatican buildings on August 29, 1864, having heard the opinion of the Consultor, responded: Affirmative. Given in Rome, from the Secretariat of the same Sacred Congregation for Indulgences, on August 29, 1864. F. Ant. M. Card. PANEBIANCO, Prefect. Philippus Can. COSSA, Substitute. Some Consultors noted the following. Namely, that it is a praiseworthy custom in some regions of the Christian world to bring infants immediately after Baptism to the churches of the Carmelites, so that a priest authorized to do so may impose the sacred Scapular upon them, and their names may be written in the confraternity's book. Therefore, the Consultor considered that there is no reason to doubt the validity of the imposition of the Scapular, provided that the things that should be observed are fulfilled, and that the imposition of the sacred habit is sufficient, so that, when the children attain the use of reason, they may validly enjoy the indulgences and privileges granted to those who wear the sacred Scapular.

[*Latin ed. p. 431*]

431 MONACEN. On the 29th of August, 1864. "A certain priest, having the faculty to distribute the Scapular of the Blessed Virgin Mary of Mount Carmel, and the blue Scapular of the Immaculate Conception, gave them to many persons. These two Scapulars were made and adapted in such a way that both parts of one Scapular were joined with the parts of the other, and were fastened together with the same cord. However, through an error,

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both Scapulars were so poorly made that they did not constitute a definite Scapular; for indeed, parts of the same color were arranged in such a way that the part for the chest was only blue, and the part that descended to the back was only of the color of tan, and vice versa. Therefore, the priest Francis De Wimmes, imploring a solution to the following doubts, requests it." I. "Whether a Scapular of this form is valid for both Scapulars." Answer: Negatively. II. "Whether it is necessary to make amends or to replace them." Answer: Negatively, with regard to the first doubt. III. "Whether a dispensation, or a new distribution of Scapulars, is necessary." IV. "The petitioner asks the Holy Congregation for the faculty to distribute, if it is necessary, to the persons mentioned above, both of the aforementioned Scapulars." The Holy Congregation of Indulgences, in the general meetings held in the Vatican buildings on the 29th of August, 1864, after hearing the opinion of the Consultor and after mature deliberation, responded: To I. Negatively, and with the understanding: that it is valid, provided that the parts of any Scapular are arranged in such a way that one hangs from the shoulders, and the other from the chest, although all are connected with a single cord. To III. It is necessary to petition the Holy See for a remedy. To IV. Provision is made in III. "Furthermore, the Most Holy Lord Pope Pius IX, in an audience held on the 20th of September of the same year, with the aforementioned Cardinal Prefect, benignly granted the requested remedy, notwithstanding any objections."

F. ANTON. MARIA Card. PANEBIANCO, Prefect.

Philippus Can. COSSA, Substitute.

[*Latin ed. p. 432*]

432. MONASTIC. The Consultor observed that the following two points were established by the Decree of August 22, 1842: (1) namely, that the blue color is necessary in the Scapular of the Immaculate Conception, just as the gray color, or black, is essentially required for the small Carmelite habit. 2. Those faithful who receive the Scapulars of Mount Carmel and of the Conception must wear both. Therefore, it is necessary that both Scapulars be distinguished by fabric and color, so that each may retain its own characteristic, and one not be confused with the other. However, the Consultor considered that a single cord does not abolish the aforementioned distinction of the Scapulars, since it is used only to hold the parts of the sacred vestment in place, and does not constitute a defining element. Therefore, if the integrity of the Sacred Scapular, such as the Carmelite one, remains, the same cord can be adapted to the blue fabric, provided that such adaptation is made in such a way that the parts of the fabric of both Scapulars correspond equally to the chest and shoulders. This was not the case in the proposed instance, in which parts of the same color fabric were joined together, so that neither the Carmelite nor the blue Scapular was apparent. With these observations, he proposed answers to the aforementioned ques-

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tions. (1) The cited Decree is as follows: "The General Vicar of the diocese of Angoulême implores a response from the Sacred Congregation regarding the following doubts: I. "Whether the blue color is a necessary color in the Scapular of the Blessed and Immaculate Virgin." II. "Whether those who have received the Scapulars of Mount Carmel and of the Conception must wear both." "The Sacred Congregation, having heard the opinions of the Consultors, responded to the aforementioned doubts: affirmatively."

[*Latin ed. p. 433*]

433 U.S. COMMI, VI IHNE INDICIS. DECREE. Wednesday, December 19, 1865. The Sacred Congregation of the Eminents Cardinals, by order of the MOST HOLY and Reverend LORD, our HOLY POPE Pius IX, and the Holy Apostolic See, concerning the Index of Books of Defective Doctrine, and their condemnation, proscription, expurgation, and permission throughout the Christian Republic, having met in the Apostolic Palace at the Vatican, condemned and condemns, proscribes and proscribes, or orders that works already condemned and proscribed be referred to the Index of Prohibited Books, the following works:

* *Codice Ecclesiastico Siculo con note ed illustrazioni*, work of the Advocate Andrea Gallo. Palermo, 1847.

* *Philosophie Religieuse, Terre et Ciel*, by Jean Reynaud; 4th edition. Paris, 1865.

* *Geschichte der Kirchlichen Trennung zwischen dem Orient und Occident*, by D. A. Pichler. Munich. In Latin: *Historia ecclesiastici schismatis inter Orientem et Occidentem*; by Doctor A. Pichler, Volume Second. Russian, Greek, and other Eastern churches with a dogmatic section. Munich, 1865.

* *Filomaria, ossia una vita romantica per saggio ad un nuovo genere di romanzi*. Volume 1. Bertinoro, 1863.

* *Publica Confessione d'un Prigioniere dell'Inquisizione romana, ed origine dei mali delia Chiesa Cattolica*. Turin, 1865.

Decree of the Sacred Office, Thursday, December 20. The author of the work entitled *Della Costituzione civile dei Clero e dell' incameramento dei beni ecclesiastici, Discorso di Francesco Dini* willingly submitted himself, and the work was disapproved. Acts, Volume I, page FU.

[*Latin ed. p. 434*]

4 3 4 DECREE. The author of the work entitled "Catechismo politico ad uso delle classi inferiori" [Political Catechism for the use of the lower classes], by Canon D. Maresca, commendably submitted it for examination on December 19, 1861, and the work was disapproved. Therefore, no person of any rank or condition whatsoever may dare to publish, or, having published, to read or retain the aforementioned work, in any place or language, but rather they are obligated to deliver it to the Ordinary of

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the place, or to the Inquisitors of heretical depravity, under the penalties indicated in the Index of Prohibited Books. These matters having been related to the MOST HOLY LORD OUR POPE PIUS, His Holiness received them. In witness whereof, etc. Given in Rome on December 23, 1865. The Decree was approved by me, and the following S. C. [Sacred Congregation] is ordered to be promulgated. ANTONINUS Cardinal DE LUCA, Prefect. Fr. Locot[entiary] of the Seal. On September 30, 1865, the aforementioned Decree was affixed and published at Santa Maria sopra Minerva, at the Basilica of the Prince of the Apostles, at the Palaces of the Holy Office, at the doors of the Curia Innocentiana, and in other customary places within the City, by me, Aloysius Serafini, Apostolic Curs[or]. Philip Ossani, Major Curs[or].

[*Latin ed. p. 435*]

485 APPENDIX Xlii. RULES OF THE DAUGHTERS' SODALITY, NOW CALLED THE SODALITY OF THE MOST HOLY HEART OF JESUS (i). I. The purpose of this Sodality is to serve as custodians of the sanctuary or oratory, to offer special devotion to the most sweet Heart of Jesus, both through the integrity of their lives and by avoiding dangers, especially those that are most ruinous to young women. IV. The President and both Assistants, who occupy the most prominent place and are seated higher than the others, should be an example to the rest through their labor and zeal in guarding the purity of chastity. II. Only young women may belong to this pious Sodality; they must not enter before they have reached the age of reason, and they must diligently observe everything, so that all may be done properly. It is the duty of the Councilors to decide on matters concerning the Congregation before the sisters come to the Holy Sacrifice; they shall note the names of the postulants, and also collect the dues from the members of the Sodality, which the Secretary shall keep. Before they are received, the candidates shall be tested for a few months to see if they have behaved properly; if they have, they shall receive the name and title of a Daughter, which will be restored at the appointed time, and their name shall be entered in a register. The Librarian shall keep the books of the Sodality, and shall return them, along with the name of the recipient, and any sacred books or other items, as the Prefect or Rector may deem appropriate, for promotion to the Oblation. III. The Prefect or Rector, who will be chosen from among the priests, shall have charge of the Daughters, unless it is necessary to seek the help of another; he shall always be present among them in private. V. The meeting of the group shall take place once a month, on a Sunday, preferably on the day when they attend Holy Mass, either in the oratory, or near the church. One of the Daughters shall be chosen to perform the duties of the President, two shall assist her; one shall be chosen by the Council, another by the Secretary; and another shall also be chosen (1) Such rules, as has already been said, were written in Italian

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and printed with the approval of the Eminence, the Vicar of the City. For the diversity of dioceses and places, they can be adapted according to what is judged most suitable; provided that those things which must be observed according to the Apostolic decree are maintained.

[*Latin ed. p. 436*]

436 APPENDIX: In the temple of the parish, after the fourteen days of the Novena of Jesus have passed, which days are filled with ceremonies and offices. Nevertheless, the Rector may announce a meeting beforehand, and 2° On the same day, when the principal feast of Christ or of the Mother of God occurs in the temple, and the Eucharist is celebrated, they will more fervently implore divine help; VI. When all are gathered together, they will perform the following acts of piety: 1° They will devoutly recite the prayers of the Auxiliary of the Lord for the entire association, and 3° They will listen to a sermon, which will be given in the temple or in the oratory or chapel. They will ask the priest to say, "Veni, Fili," and so forth. 2° They will sing a hymn or offer a sacred praise to the Most Holy Heart. 3° The priest, for a short time, will offer prayers suitable to the Heart of Jesus and to the Apostleship, and will also speak about the pious association of the Most Pure Heart of Mary. 4° In addition, candles will be lit before the image of the Most Holy Heart, and they will offer that prayer which is called the "Crown of the Most Holy Heart," and they will offer prayers for the conversion of sinners. Those who are members of this association will, as an example to all in the parish, offer good works for the benefit of Christ. 5° Finally, they will conclude the meeting with a hymn. VII. On Sundays, in any month, the following should be observed, as directed by the Prefect or Rector: 1° They should recite the customary prayers in the morning and evening, and persevere in them constantly; 2° As far as possible, all members should attend Mass publicly, even on days that are not holidays. 3° They should recite the Rosary of the Blessed Virgin daily, either separately or together, or with their families; if they cannot do so, they should offer at least six "Pater Noster" prayers at any gathering, remembering the Holy Trinity and the "Ave" with the "Gloria" to the Blessed Virgin, for the benefits granted by the Immaculate Virgin. Through this pious practice, those who wear the Scapular of the Blessed Immaculate, whether they are performing these actions in Rome or elsewhere, will receive the indulgences granted for the stations (1). 4° In the evening, before retiring for the night, approximately (1) Many are the indulgences that can be gained by those who wear the small blue Scapular in honor of the Most Holy Virgin Mary. Those that are here mentioned are of this nature: "The indulgences of the stations of the churches of the city (as can be seen in the Roman Missal), provided that

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anyone goes to a church of the regular clergy..."

[*Latin ed. p. 437*]

IX. XIV. Concerning the examination of conscience, a portion of time should be dedicated to it daily, and from the very beginning, they should be instructed and accustomed to sincere contrition, and they should pronounce the name of God with devotion. 5° They should accustom themselves to reciting prayers frequently throughout the day, and they should avoid all friendships that are harmful, or that lead to dissipation, or that involve immoral dances, or that corrupt morals unbecoming of a Christian woman. If, after being warned twice, they do not correct their behavior, they shall be severely punished.

X. In order that the dangers to virtue may be averted, 1° They should avoid clothing that is lightly made and that is contrary to the laws of modesty. 2° They should avoid noisy gatherings, especially those in which immodest conversations are mingled, and they should hasten to enter into marriage, if they are inclined to such things and are able to do so.

XI. In order that they may lead their neighbors by example, 1° They should avoid all detractions, whether against their sisters or against others. 2° All, but especially the younger women, should be diligent in pious practices; 3° They should consult with good and prudent people, especially with their studies, so that, when they are mistaken, they may be corrected; and they should always seek counsel from their parents or from the Prefect of the Congregation.

XII. They should dedicate themselves to spiritual exercises, whether in the parish or privately, which will help them to grow in all holiness. The Rector will, for three days, suitably instruct them. 5° Before undertaking these exercises, they should confess, and they should not omit a general confession of all their past sins that need to be expiated.

XIII. If any of the daughters of the Most Holy Heart should marry, the others should receive Holy Communion in the Congregation of the Theatines, and they should pray there. "Indulgences are granted to those who venerate the Most Holy Sepulcher and the Holy Land of Palestine, twice in each month, by praying in that same church." His Holiness, under the date of December 3, 1847, granted that those who wear the scapular should, in places where there is no church of the Regular Clergy, substitute another church, in which, however, there is an altar of the Blessed Virgin. See the collection entitled "Resolutions, or Authentic Decrees" of the Zivalli Congregation, in appendix No. L1V. Indulgences... granted to those entrusted with the care of the Most Holy Sepulcher, collected by Aloysius.

[*Latin ed. p. 438*]

438 APPENDIX XIV. Let them offer Holy Communion and, for this, let them invoke the strength and grace of the community, commending it to

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God (1). So that whatever sin may always flee, that in your love, O Lord, it may find rest, and that the other virtues may be more and more kindled, so that the beautiful flower of purity may accompany the most precious Body, and that, above all, for the sake of its soul, they may diligently guard it, so that they may offer Holy Communion, and say the prayer three times, and furthermore, they may pour forth other prayers before God, which each one can offer according to his own devotion. — May the most holy fervor of Christian charity lead me to this goal, before the Blessed Virgin Mary and the heavenly court, I today dedicate and entrust myself to the Sodality of the Most Holy Heart of Jesus, as a Daughter of the Most Holy Heart of Jesus, with this will and intention, that I may faithfully fulfill all the rules and exercises of this pious Sodality, and that from this may come the salvation of my soul and the good of my neighbors, whom the infinite love of your Heart has redeemed. Amen.

So may it be, I beseech you.

Inscripta fuit die Praefectum, seu Rector etc. (t) To offer Holy Communion is an expression that all Catholics understand; it does not refer to a sacrificial action, but rather to an offering in the broad sense, which can be offered to God, for the good of one's neighbor, just as the merits of any other good work can be offered to God for the good of another. Especially when it comes to the most sacred work, such as the Holy Sacrifice, for which the faithful, in a more intimate union with God, offer their prayers, which are therefore much more efficacious.

[*Latin ed. p. 439*]

439 APPENDIX: INSTRUCTION ISSUED BY THE SACRED CONGREGATION ESTABLISHED BY THE FOURTEENTH SESSION OF THE COUNCIL, ON THE 22ND OF AUGUST, 1840, CONCERNING MATRIMONIAL CAUSES.

"As the Glossa observes (in cap. fin.), 'When, therefore, in such causes, the matter pertains to the coldness and malice [of one of the parties], it is not concerning the right of either party, but principally concerning the Sacrament, and for the purpose of dissolving the matrimonial bond, the proceedings must be conducted not as in other causes, especially civil ones, but according to the Holy Canons, and according to the established Constitution of Saint Benedict XIV, and according to what has been sanctioned by the Holy Canons, so that a safe and just judgment may be formed. Therefore, these proceedings, with the exception of those articles which must be excepted, namely, the articles, responses pertaining to them, and expert opinions; especially those concerning nullity, will be conducted in the Latin language.

Furthermore, in order to remove the frauds which often arose from the malice or deceit of the spouses, Pope Benedict XIV ordered that the proceedings (in the aforementioned Constitution, page 5, volume last, number

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16) be conducted in the Latin language, according to the Holy Canons, so that a safe and just judgment may be formed.

Moreover, since, with all due diligence and care, in causes of this kind, all matters pertaining to the validity or nullity of the Sacrament, and to the dissolution of the matrimonial bond, are most carefully examined, it is possible that judges of lower rank may be able to obtain knowledge of these matters. But because it often happens that, through some privilege or prescription, the proceedings, even though they have been conducted with the utmost care, under the questioning of God, and with the most diligent examination by the Bishops, and are properly and appropriately reserved for the examination and jurisdiction, even by Abbots, although they are of Cardinal rank, the Sacred Congregation has often issued instructions and prescribed norms, so that it may be safer to follow the instructions of the Sacred Congregation.

[*Latin ed. p. 440*]

APPENDIX XV. 440 Even before a judgment is pronounced, but upon the request arising from a decree of the Judge recorded in the proceedings, even the acts of the Episcopal examination, concerning which questions are posed, shall be produced, provided that the spouse insisting on the nullity is present, or by an ecclesiastical person specially delegated by him. To these shall also be added, in the act of examination, those things which the Judge, by virtue of his office, shall deem more suitable for discovering the truth, or in the declaration of the answers given, if new circumstances arise, which must be understood to be matters to be inquired into. Therefore, whenever one of the spouses brings a petition concerning the nullity of Matrimony, the Bishop shall, if he wishes, delegate someone; then, either he himself, or the Judge shall order the Defender of the Matrimony to be cited, regarding other questions, concerning which all the others, informed of the matter, are to be examined. If he does not appoint someone with those qualities, he shall appoint a suitable man.

"Therefore, when the day arrives which the aforementioned Constitutions of Pope Benedict XIV, cited above, require, and the Defender of the Matrimony is to appear on that day to take the oath, the Judge shall present to the party to be examined the oath concerning speaking the truth, and then, diligently and incorruptly, he shall present the questions prepared, as has been said by the Defender of the Matrimony, and he shall hear the answers, and he shall record them, and he shall be able to present them individually, to the Defender of the Matrimony. Furthermore, here the Defender of the Matrimony shall be cited to all the acts, lest they be tainted by a defect of nullity. Those who plead for the validity of the Sacrament shall always, first, present the answers dictated by the Judge. If any question is added to be received, and, by virtue of his office, by the Judge or by the Defender of the Matrimony, the Cancellarius shall interrupt, to receive it

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and to exhibit it.

"Having noted the day in the citation, the party insisting on the nullity shall note the questions presented by virtue of office; and the Defender of the Matrimony shall deliver the closed questions, the questions exhibited by the Defender of the Matrimony or the Notary, to be opened with that question and answer, and the Defender of the Matrimony shall resume the progressive order, and the Cancellarius shall observe the progressive order."

[*Latin ed. p. 441*]

APPENI » If the examination is concluded in one session, as stated in XV. 44, and the third spouse, who will be present, is unable to answer, the Judge will postpone it, and will also designate a day and hour, according to the laws prescribed in the preceding paragraphs, and will proceed in the same manner and form as described above. Once the examination is concluded, whether additional or new matters have been added, the Chancellor of Karlova will read aloud the answers given by the examined party, as the Defender of the Matrimony deems it advisable, and will declare the answers, as he pleases.

« Then, the examination of the seventh witness, that is, seven relatives from each side, will proceed, concerning the same spouse. The Judge will administer an oath to the spouse, in the very words of Text, Chapter [omitted], concerning truth and falsehood. In order that the Judge may more easily carry out this task, the Defender of the Matrimony will summon the plaintiff, or the party who has given the answers, to indicate seven relatives, by blood or affinity, if possible; if this is not possible, then seven neighbors of good fame. Each of these, whether they are witnesses to the examination or have heard the confession of the spouse, will be questioned immediately after the examination, or even later, if they deem it more likely that they will speak the truth, and if they wish, they may propose articles concerning which they believe the spouse has spoken truthfully. Similarly, the other spouse will be examined, and the Defender of the Matrimony will summon him, and as articles are proposed, he too will indicate seven relatives or neighbors, and if there are fewer than seven, then he will summon the spouse who was first questioned, and in the presence of the Defender of the Matrimony, they will testify separately concerning the fourteen articles proposed.

« This rule, which has been given for the examination of the designated parties on the specified days and hours, must be observed, with due regard being given to the circumstances, in any other examination.

« It will be permissible for the spouses to present witnesses of good fame who have been instructed in the matter, who will all be questioned separately and in order, and after the examination has been concluded, they

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will be asked whether they believe that the spouse has spoken truthfully. »

[*Latin ed. p. 442*]

442 APPENDIX XV. Furthermore, concerning all that has been prescribed up to this point: Moreover, in order that the complaint may be subjected to examination, and in order that it may be determined whether there is a nullity in the marriage, the Defender of the Matrimony, having considered the acts already completed, will summon those who have been instructed in the matter, and will order them to appear for examination. If either of the spouses is absent and cannot conveniently come to the City, perhaps due to distance, or at the request of one of the parties, or at the request of the sister of the Matrimony, the Defender will provide them with the notes of the Medical Experts and Surgeons, so that they may confess, be examined concerning the inspection of each spouse, according to the interrogations and inquiries made by the Defender, and will sign and seal them.

The notes presented by the parties will then be transmitted to another suitable person appointed by the Bishop, who will choose five experts: three medical doctors and two surgeons, from among those who possess the qualifications mentioned in the Bull, frequently praised by Pope Benedict XIV, and who, although not necessarily appointed by virtue of their office, are nonetheless suitable and willing to perform the duties of the Defender of the Matrimony, and who are considered worthy. He will take care that all the witnesses, both as regards their knowledge and their integrity, are present for the examination, and that they are questioned concerning religion, especially when the marriage has just begun, as to whether signs of mutual love and affection have been present between the spouses; how long they have lived together in the same house or City; whether the consummation of the marriage has been demonstrated; and whether, if it has not been consummated, they know the reasons for the impediment to consummation, and whether they are willing to remain in the marriage.

The Judge, the Defender of the Matrimony, the Chancellor, and the Experts will attend at the appointed time and place. Each of the Experts, and separately, will examine the spouse, and will do everything possible to ascertain the truth.

If the complaint concerns impotence, the medical experts whom the spouses have consulted will be questioned.

[*Latin ed. p. 443*]

ix xv. 443. After careful consideration, and after experiments conducted by at least two experts in medicine – according to the established methods, but not illicit ones – the individual surgeons will diligently prepare a report. This report will concern the examination and assessment of the woman, and will be presented in writing. The statutes governing this examination

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will be strictly observed, and the woman will be brought to the home of an honest matron, together with a judge appointed for this purpose, to perform the aforementioned duties, with the assistance of a personal attendant.

It will be determined whether there are any certain physical signs of impotence, either due to the conformation of the parts, or due to some other defect that may be apparent. If such signs are present, it will be determined whether there are always three midwives and a matron present. The woman will then be immersed in a bath of tepid water, which will first be examined by the experts to ensure that it is pure water. During this bath, which will last for at least one quarter of an hour, the midwives and matron will be present. After this time has elapsed, and with the midwives and matron still present, the Defender of the Marriage will present a closed questionnaire and sealed documents, concerning which the experts must provide an examination, and the woman will be given a reasonable amount of time to respond. No opportunity will be given for any delay, or for any concealment, nor will any additional questions be allowed, nor will the woman be allowed to withdraw from the examination. If the examination of each expert is to be conducted separately, the matron must always be present. If the judge finds that it is necessary to postpone the examination, he will designate another day for it to take place, ensuring that this examination follows.

Before the examination, the experts will take an oath to speak truthfully, and after the examination, they will confirm in writing that the woman is either a virgin or has been violated and corrupted, using the established rules of the art, so that this can be determined with greater accuracy. The judge, the Defender of the Marriage, and the Chancellor will then sign the document, and the act will be recorded.

The judge, the Defender of the Marriage, and the Chancellor, together with the experts, as previously mentioned, will proceed to the home of the matron for the examination of the woman's body. After this examination has been completed, the judge, as previously stated regarding the experts, will appoint three midwives, who will then report separately on any signs of virginity or corruption.

[*Latin ed. p. 444*]

444. APPE. XV. Post inspectionem resultatorum, et ante publicationem sententiae, investigabuntur, si certae virginitatis signa et argumenta, praeterquam Defensorem Matrimonii, sunt, et si virginitas, aut integritas, aut corruptio, et si qua fraus ad simulationem virginitatis potuerit esse adhibita semper et quandoque. Deinde, locus erit defensionibus. Libero erit Defensori Matrimonii, post processum publicationem, novas probationes exquirere, quae clausae et obsignatae, cum probationibus Matrimonii, exhibebit Defensor, et numquam bina sententia nullitatis:

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conformis transeat in rem iudicandam. Periti erunt subiiciendi examine, quorum iudicium erit exquirendum, agens favore Sacramenti, et, si causa possit, etiam super relatis et depositis ab Obstetrixibus. Tandem examen subire debet Matrona, quoad praestitam virginitatem, toto balneo et recognitione. Omnibus absolutis, et cum nihil amplius deducendum censuerit Defensor Matrimonii, sententiam proferet Episcopus, congrua congruis referendo.

Si haec Matrimonii nullitas decreta fuerit, debebit Defensor Matrimonii, juxta Constitutionem, nullam aliam probationem exquirere, nec poterunt Iudices ad alia vota transire, nisi post obtentam alteram sententiam confirmantem nullitatem, sub poenis, et publicabitur processus, edito super hoc decreto a Iudice, contra polyganos constitutis in civitate, factisque subscriptionibus ab Eo, a Defensore Matrimonii, et a Cancellario, juxta Constitutionem Dei miseratione. Haec habenda methodus. Acta transmittenda erunt Episcopo ad Iudicem, ad quem provocatum fuit, in copia authentica, et actis continentur nemini, nec ipsis quidem coniugibus eorumque soluta Defensoribus competenti mercede Cancellario.

[*Latin ed. p. 445*]

445 APPENDIX XV. CONCERNING THE PRACTICE OF THE HOLY APOSTOLIC PENITENTIARY. The Holy Apostolic Penitentiary considers granting matrimonial dispensations to poor Orators, and, in addition, according to what was noted in Appendix XII, it grants the dispensation itself, under the condition that the Commissary of Rescripts intervenes, when among the Orators there occurs incest, or when the marriage has not been consummated, provided that the impediment is not removed by any prohibition or interdict for a period of two months, or for a period of one month, faithfully observed by the Orator, who, during that time, abstains from any act of incest; thus it responded on February 15, 1854. It is the established practice of the Holy See, in matters concerning confession, not to grant the faculty of dispensing, unless the sacramental interdict of marriage is first observed, and the faculty of dispensing is granted with the clause attached, which pertains to the separation. It is fitting to indicate the practice that has prevailed and still prevails when dealing with this dispensation, and which consists of the following two questions asked of the Ordinary: I. Regarding the term "quocumque tractu" [whatever term]; II. Regarding the rescript "What is understood by the clause" which, in the Apostolic Dataria, regularly could only be issued with such dispensations, namely, "If, by an interdict issued by the Ordinary for whatever term, the Orators nevertheless have in themselves the term of the interdict," (in the sense of the response to the preceding doubt), whether it is necessary for a new rescript, or a revalidation. The Holy Penitentiary, after mature consideration of the matters presented, responded: I. To this, it is to be understood that, whatever the term, the matter is referred to the Delegate, and that

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the particular law to be observed is contained in the following terms: "We therefore, through the Apostolic authority, command to you..." Then, John and Lucy, who are declared to be poor and miserable, and who live solely from their labor and industry, are, in the first place, referred to the Delegate, so that, under the clause attached, the condition may be fulfilled, but not by their own action. This rescript, which is II. Regarding jurisdiction, is issued with the condition that...

[*Latin ed. p. 446*]

446 » APPENDIX XV separatis inter se; deinde, si veniam ab ea Dataria adhuc servatur, si alii te humiliter petiverint, eam illis poenitentiam publicam imponas, quae alios deterreat a similibus criminibus; et, ut dictus Ioannes, cum de gradibus maioribus agitur, suam, fabricae, vel in aliquo loco pio, tribus saltem mensibus conferat et alia iniungas, quae de iure fuerint iniungenda. » In forma pauperum pauperes invicem per mensem separantur. » Qua poenitentia publica peracta, et recepto ab eis iuramento, quod si veniam a te petiverint humiliter, imposita eis pro modocul, incestum illum non commiserint, ipsos ab incesto salutari etc. Cum eisdem exponuntur confessionibus, tuo, gravi poenitentia, ut postquam in separatis perseveraverint, et dummodo etc. dispenses. » Antiquitus, Sancta Sedes non videbatur cum pauperibus facile dispensare in gradibus prohibitis, si non adfuisset ea causa canonica, quae vulgo celebris reddita est ea litterarum forma, quam modo indicavimus; deinde oneramus, tunc cum iisdem Ioannes et Lucia, postquam praefata separatio fuerit, ipsi arbitrio in separatis, dummodo ipsa Lucia per pauperibus, exinde aliis rationabilibus causarum ex tempore, concessae sint. Et quamvis istae, tum illae propter hoc rapta non fuerit. » Quando vero non agitur de legitima decerptione, sed de pauperibus, et miserabilibus personis, litterae expediebantur, in forma (i) Vid. Pyrrbum Corradum in celebri opere cui titulus: Praxis dispensationum 1. 8 c. 5 n. i, in quo opere erudite explanatur ea omnia, quae scitu necessaria sunt in executione rescrip torum.

[*Latin ed. p. 447*]

APPENDIX xv. 447. Now, however, it is customary that, when in this dispensation granted by the Oratory for the reparation of scandal, a condition is added, for example, concerning reconciliation and the provision of assistance to honest families. Therefore, if the Orators are again expressly commanded to separate, for example, by an interdict, they should proceed in this manner with this clause: "Having explained the nature of the interdict, they shall state that, although a separation has been ordered, it is still considered a violation of the interdict if they do not comply, and that the time for compliance may be extended (that is, the separation may be postponed) for a month, even if the separation has already begun, provided that the condition is fulfilled, and that the Delegate may, after the

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fulfillment of these two sacraments, dispense from the interdict by special authority....” This dispensation does not cease. Therefore, even during the time of the interdict, and by order of the Delegate, the Orators can dispense, concerning the rescripts of this kind, which are exempt from the Apostolic Dataria. However, the Sacred Penitentiary, although it grants dispensations to the poor, provided that the violation of the interdict is not committed in the external forum, and that such dispensations are properly granted to the poor; these are not, in the form of the rescripts, subject to the limitations that are appended to the Sacred Penitentiary.

Several things should be noted concerning this limitation. Indeed, the Sacred Penitentiary does not seem to have considered the tenor of that form, which we mentioned above. However, it appends a clause between the cases, in which it prohibits the familiar use of those words: ”Before the interdict is lifted, the Orators, whatever their method of acting, in the particular case, are forbidden...”

A serious question arose among the most learned Doctors in the practice of the Apostolic Dataria, concerning a similar case, namely, whether, before the Delegate sends the letters concerning the interdict, the familiar use and custom, which is forbidden to the Orators, is prohibited by these letters of the Delegate, as it is commanded that the separation be observed in the form for the poor, namely, with these words: ”In the first place...”

(1) It is not uncommon, as can be seen in the Corpus Juris Canonici, that certain Latin words are used in legal practice, whose Latin origin, if one were to inquire, would not exhibit the meaning that is commonly attached to them. To understand this, it must be considered that practice is a matter of fact, as noted by Pyrrhus Corradus, loc. cit., lib. 7, cap. 7, n. 88, and that formulas are not usually devised at one time, but over time, when indeed necessity and experience suggest it, and those very words are introduced into formulas, by which the minds of those who address the Apostolic See are opened, and which gradually pass into use among officials, and the Curia, and then into formulas, so that from practice, a meaning is determined and circumscribed.

[*Latin ed. p. 448*]

APPENDIX: concerning those who are separated from each other: if a dispensation is to be granted... it is expedient for them to proceed in this manner... at that time, XV. Corradi, under the Pontificate of Pius V, after others, considered that, contrary to the opinion of others, it would be necessary to examine whether, in the case of those who, after having persevered in the aforementioned separation, obtain special dispensations... the prescribed laws should be observed. Indeed, the Doctors inquired: ”What is to be done concerning other dispensations, which are granted, if, during the time before the separation was imposed, or if a decree of this separation has not been obtained, does this apply to the poor?” Corradi taught the

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same: "It must be said and held that, if the aforementioned Orators have again knowingly entered into carnal relations; whether they require a new dispensation concerning this new union?" He, explaining the loc. cit. I. 8, in the ordinary form, in which the mention of the union is made, and c. 5 n. 37, adduces reasons which those who maintained a negative opinion brought forward, and are as follows: "Because it is not established by law whether, in this case, an affirmative or negative answer should be given; therefore, it must be referred to the style of the Roman Curia itself, which has admitted this, as all acknowledge; and in this case, the negative part seems to be the one that is observed: for it has always been the practice of the Curia, that in this case, the Orators do not require a new dispensation, with regard to this second carnal union, because it is sufficient that the Pope has once known that a union has taken place between them..."

However, in the practice of the Dataria, it seems... The authors cited.

[*Latin ed. p. 449*]

449. CONGREGATIO EPISCOPUM ET REGULARIUM. QUAESTIO DE EPISCOPO REGULARI. Die 6 Maii 1861. Compendium facti. Episcopus N. haec Sanctissimo Patri exposuit: «Romanus Pontifex Benedictus XIII. in Constitutione: Custodes, die 7 Martii 1725, loquens de Regularibus ad Episcopatum evectis, expresse iniungit, in virtute s. obedientiae sub poena suspensionis ab exercitio Pontificalium ipso facto incurrenda, Papae reservata, ut singulis suae Regulae officiis et obligationibus, quae Pontificale officium minime impediant, perpetuo subsint.» «Ex hac pontificia declaratione, Romanus Theologus in annotatione operis Ferraris subiungit: «Hinc liquet, praedictos Episcopos subesse omnibus illis obligationibus, quae in Regula, quam professi fuerant, exprimuntur, quaeque non pugnant cum onere et dignitate episcopali. Idque respectu Franciscanorum praesertim tenendum est tamquam certum, cum emorum Regulae praecepta obligent sub mortali, a quorum obligatione, nisi specialiter a Sede Apostolica dispensationem obtinuerint, nulla causa est cur censendi sint exempti, dum ad Episcopatum promoventur.» «Ex adverso tamen habetur decisio s. Rotae die 3 Aprilis 1761 in Vilnen. Ordinis S. Basilii M. Ruthenorum, de qua, ita scribitur in opere Ferraris (additiones ex aliena manu): «In hac decisione statuitur, quod ut primum Regularis ad Episcopatum promovetur, a jugo Regularis Observantiae liberatur, litteramque acquirit facultatem, donationem etc.» «S. Alphonsus, cuius sententias iudicio S. Sedis quis inoffenso pede sequi potest (1), in L. 4, dub. i, quaes. 2, quaerens: - Utrum Episcopus Regularis teneatur ad observantiam suae Regulae (1) Vid. Appendicem XVI, lect. tom. I, fase. VIII, 29.

[*Latin ed. p. 450*]

450 A DOUBT CONCERNING A REGULAR BISHOP. He responded: "It is more probable that they are not under any fault" regarding the Rule

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to which they are bound, but only out of a debt of honor, which "however, does not obligate even under a slight obligation." And in confirmation, he cites canon 1 of the Statutum; and he adds: "But a Regular Bishop is entirely free from the vows proper to any particular Religious Order." With these premises stated, the Bishop N. requested an authentic declaration from the Holy See. After prayers offered to the Sacred Congregation, two Theological Consultors were heard, one a Regular prelar, the other a secular bishop, who, with abundant learning, expressing their opinions, agreed on the same judgment (1). It is best to briefly mention at least the most important points that are found in the extensive opinion of the Reverend Bishop Consultor. The opinion of one of the Consultors, summarized. To remove any ambiguity concerning the words – and the Rule – which he professed in the formula of the doubt, so that, indeed, the resolution of the doubt should not be considered to apply only to some Religious Orders, the Consultor stated this beforehand. Although three vows essentially pertain to the Religious state, namely chastity, poverty, and obedience, these are not sufficient to constitute the Religious state, unless they are made according to a Rule approved by the Church. Furthermore, the manner of profession is not the same in all Religious Orders, as noted by St. Thomas (2-2 q. 186 art. 9 ad 1), who says: "In some Religious Orders, some profess more cautiously, not indeed the Rule, but truly according to the Rule, that is, to tend to conform their conduct according to the Rule, as if according to some example. In some Religious Orders, still more cautiously, obedience is professed according to the Rule; so that it is not contrary to the profession, unless it is contrary to a precept of the Rule." Such manners of professing are, in the matter under consideration, of no importance. With these and other things noted, he expressed his opinion.

(1) The Theological Consultors were Joseph Cardoni, then Bishop of Caristen; the Reverend Father Jerome Gigli O.P., and in the parts of the infidels, now Bishop of S. P. A.; the other was the Illustrious and Reverend Lauretan and Recineten.

[*Latin ed. p. 451*]

DOUBT REGARDING A REGULAR BISHOP. 45! The Consultor divided the matter into two sections, in the first of which he inquired: whether and how a Regular Bishop is bound to chastity and poverty according to the Rule. In the second section, he inquired: whether and how a Regular Bishop is bound by the vow of obedience and to the observance of the Rule.

FIRST SECTION. WHETHER AND HOW A REGULAR BISHOP IS BOUND TO CHASTITY ACCORDING TO THE RULE. – A Regular [cleric], according to the common opinion of theologians, as the Consultor noted, does not cease to be such in substance, even when raised to the episcopal or even cardinal dignity. He would cease to be Regular either by the nature of the thing itself, or by the dispensation of the Supreme

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Pontiff; but neither can be said. Not by the nature of the thing itself, since the state of a Regular [cleric] can be compatible with the episcopal state, as St. Thomas teaches in 2-2, question 185, article 89: "The state of religion pertains to perfection, as a certain way of tending towards perfection." "But the episcopal state pertains to perfection as a certain magistracy of perfection." Therefore, the state of a Regular [cleric] is compared to the episcopal state, just as discipline is compared to magistracy, and disposition to perfection. "Disposition is not taken away by the coming of perfection, unless perhaps in so far as it is contrary to perfection. But in so far as it is suitable to perfection, it is rather confirmed." Not by dispensation: for no pontifical document can be adduced to prove this; indeed, from the 5th century, Innocent I. wrote to Bishop Victricius of Rouen in his letter, 1 chapter, 10: "Concerning monks, who, having lived for a long time in monasteries, if afterwards they attain to the order of the clergy, they should not deviate from their former purpose. But as they were in the monastery, and what they have long observed, they should not lose, being placed in a better state." From these things it follows that a Regular [cleric] raised to the episcopate is still bound by the three vows that pertain to the essence of the Regular state. Then, having made some individual observations concerning the vow of chastity, by which other priests are bound, and even more so the Bishop and the Regular [cleric], the Consultor began a discussion on the vow of poverty, and specifically according to the Rule. POVERTY.

[*Latin ed. p. 452*]

452 A DOUBT CONCERNING A REGULAR BISHOP. Furthermore, there are two principal effects of the vow of poverty, one of which can never be separated, namely that a Regular [cleric] possesses nothing of his own, or at least, he cannot use things as if they were his own. Hence, St. Thomas [Aquinas], 2-2, question 185, article 8, ad 3, teaches: "They cannot, in any of any way, possess anything as their own," and question 88, article 11, ad 1: "They do not possess anything as their own, but rather, as stewards of the common goods of the Church." The other effect, which is almost legal, is that the Regular [cleric] is forever rendered incapable of possessing dominion over things, and of ownership. Therefore, St. Thomas, in the aforementioned passage, question 185, article 8, ad 3, notes: "However, if, by the concession of the Pope, he makes a will, it is not understood that he is making a will of his own accord, but rather, the authority of the Apostolic See is understood to have amplified the power of its dispensation, so that its dispensation may be valid after death." Besides these effects common to all who have solemnly professed poverty, there are also those that arise from the particular Rule, according to which the vow of poverty was made. And on this matter, the Consultor cited the authority of Suarés, Volume Al, book 3, chapter 16, in which he

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wrote: "Although, therefore, we give [something], the Bishop is no longer bound by the Rule; nevertheless, he can be bound by the vow of poverty made according to the Rule, because there the Rule does not impose the obligation, but indicates the matter of the vow." Therefore, the Consultor observed that, although the obligation of the vow of poverty is the same for all with regard to the two aforementioned effects, it may nevertheless be different with regard to the other effects, arising from the particular Rule. Hence, for example, a Bishop of the Order of St. Francis is bound by a stricter observance of poverty than a Bishop from some other Order of Clerics Regular. And with regard to the Society of Jesus, Suarés speaks as follows: "Concerning the vow of poverty in the Society, it is clear from the examination of the first chapter, where the vow of poverty is explained as follows: 'By accepting poverty, so that neither does he will, nor can he have any revenues for his support, nor for anything else. And further: 'Nor even (although it is permitted to others) for the sacrifices of the Mass, or for stipends, or for readings, or for the administration of the Holy Sacraments, or for any other pious office from those which, according to its constitution, the Society can exercise, any stipend or alms.'"

[*Latin ed. p. 453*]

DOUBT REGARDING A REGULAR BISHOP. 458 "For these kinds of services, compensation is usually given, and it can come from others, rather than from God, to whom all things ought to be done purely."

"However, although a Regular Bishop remains bound by these obligations, he is not bound by the use of poverty in the same way as a simple Religious. This would be contrary to the new episcopal status which he has assumed. Therefore, he must have a wider use of temporal things, since this use can be considered in three ways: 1, in acquiring goods; 2, in retaining them; 3, in expending them. He can, therefore, acquire goods, always forbidden from owning property outright, in the same way and by the same titles as a secular Bishop; namely, by donation, by contract, by will, and by legitimate succession. A monk who becomes a bishop, as a legitimate heir, may afterwards have the power to claim his paternal inheritance, as it is read in canon Statutum iSq. i. He acquires, however, not for himself, nor for the monastery of which he is no longer a member, but for his church, to which he is responsible. Therefore, St. Thomas, loc. cit., art. 8 ad 3, declares: 'They (Regular Bishops) cannot, in any way, have anything as their own, because they do not claim the paternal inheritance as their own, but as due to the Church.' Hence, it is added there (cap. Statutum 18 q. 1), that after a bishop is ordained, 'whatever he can acquire, he must restore to the altar to which he is consecrated and designated according to the sacred canons.'"

"Furthermore, the Consultor inquired to whom a Regular Bishop, who is merely a titular bishop, acquires property, and Suaresius answered. 'It must be said, of itself and by the force of law, that he acquires it for the

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church of which he holds the title; for it is true that those goods cannot be effectively applied to pious works which are to be dispensed, and this dispensation is entrusted to the Bishop, depending on the Supreme Pontiff' (De Relig. t. 3 /. 3 c. 17 n. 5). And in accordance with this doctrine, a decision was issued in Vilna concerning the Order of St. Basil the Great of Ruthenians, of which Bishop N. spoke, in which a certain sum of money donated by a Bishop to the Order of St. Basil the Great, in favor of another Religious Order, was declared valid. Moreover," (the Consultor continued), "can a Regular Bishop possess and retain with himself all those goods which he has acquired after assuming the episcopate; but those goods, with which, from..."

[*Latin ed. p. 454*]

454. DOUBT REGARDING A REGULAR BISHOP. A regular [religious] previously enjoyed the permission of his Superior; he cannot retain it, but is bound to leave the monastery, according to the cited canon, which states: "Whatever he may have acquired, or may have appeared to possess, he shall leave to the monastery, and to the judgment of his Abbot..." Furthermore, the Supreme Pontiffs Clement IV, for the regulars of the Order of Saint Dominic, and Alexander IV, for the regulars of Saint Francis, imposed the penalty of suspension from the use of pontifical functions, if those promoted to the episcopate did not surrender to their Superior all that they possessed, books not excluded. Regarding the use and dispensation of goods, the Doctors agreed on the following points: 1. That a regular bishop, as required by the new law, has greater powers in the use and dispensation of goods than a simple regular. 2. That by the force of his episcopal status, he can use goods and dispense them to others independently of the will of another, which a simple regular cannot do. However, this power is considered tacitly granted by the Roman Pontiff, so that if the Roman Pontiff were to wish to limit this power and manner of disposing of things, the regular bishop is bound to observe this limitation imposed, not only as do other bishops, but also by a special obligation, arising from the vow of poverty; and in this way, the essence of the vow remains, by which each person is bound, so that if he uses goods, he must use them not as his own. Therefore, since regular bishops are, in effect, administrators and dispensers of the episcopal table, they are bound to allocate surplus revenues to the poor, and to pious uses, reserving only those things that are necessary for their honest sustenance; and this honest sustenance, by force of the vow and by special rules that determine the subject matter of the vow, must be more modest than that which might be suitable for a secular bishop.

CHAPTER SECOND. WHETHER AND HOW A REGULAR BISHOP IS OBLIGATED BY THE VOW OF OBEDIENCE, AND TO THE OBSERVANCE OF THE RULE. The Consultor raised the question of the obligation of a regular bishop, which arises from the vow of obedience. He stated that

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there was no reason to doubt that a regular bishop is bound by the vow of obedience, since he is a regular.

[*Latin ed. p. 455*]

DOUBT CONCERNING A REGULAR BISHOP. 455 [This point] must not cease to be. However, since he is placed among the Princes of the Church of God, the order requires that he not be obligated to render obedience to the Prelates of his Order. Nevertheless, when the vow of obedience is urgent, he will be bound, by a special obligation, to obey those to whom obedience is due from the general superiors of the Orders, namely, the Supreme Pontiff, who is the superior of all Orders. The Consultor stated that this applies even when dealing with only titular Regular Bishops. For these also belong to the principality of the Church, although they may not, by accident, exercise jurisdiction. He did not fail to observe that, by force of the vow, Regular Bishops are bound to obey only the Roman Pontiff; to others, if there are any, such as Patriarchs, Primates, Metropolitans, or even Synodal bodies and other ecclesiastical laws, they must obey, just as other secular bishops are bound to obey. For such superiors are not substituted for those to whom the Regular bishop promised obedience in the profession of his vow. The Consultor, proceeding to the core of the question, namely, the observance of the Rule, advanced with greater learning and a wealth of documents to achieve the goal assigned to him. Although we cannot refer to everything, we will, nevertheless, be careful to refer to the most important points. First of all, the Doctors agreed that a Regular Bishop should not be subjected to the coercive force of the Rule, to which other Regulars are subjected, if they do not observe the Rule. On this matter, Passerinus, in *De triplici statu hominis*, question 185, article 8, number 115, gives the following reasoning: "The reason is because, although in matters pertaining to perfection, the master and the student are taught the same things; both are bound to read and meditate: nevertheless, it does not befit the master to use a rod or whip to compel the student to study. Thus, it is fitting for a religious bishop to observe the Rule of his Order, but it does not befit him to be subjected to coercive force, through the infliction of penalties, but rather, it is fitting for his dignity that he be moved to observe the Rule, as much as possible, by a kind of dominion and freedom, out of love for what is honorable, and not out of fear of penalties." From this, the Consultor concluded: just as a bishop is not subject to the penalties of the Rule inflicted on those who transgress it, so too he is not bound to observe those Rules which obligate, not for the sake of punishment, but only for the sake of penalty.

[*Latin ed. p. 456*]

456. DOUBT CONCERNING A REGULAR BISHOP. Furthermore, the

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Doctors are agreed that a Bishop is not bound by any reason to observe those rules which either do not befit the episcopal dignity, or are contrary to the episcopal office, or at least impede the proper exercise of that office; as is argued from *Nemo* 2, *causa* 16, *quaestio* 1, where St. Gregory says: "No one can serve both the ecclesiastical observances and remain 'ordered' in a monastic rule, so as to maintain the jurisdiction of a monastery, when he is compelled daily to remain in ecclesiastical ministrations." The Consultor further inquired what sort of rules are those which are not compatible with the episcopal office, and he defined them with the angelic Doctor in the aforementioned place, article 8, where he wrote: "If there are any observances in the monastic rule which are contrary to the pontifical office, such as solitude, silence, and certain abstinences, or severe vigils, from which one is rendered unable to perform the pontifical office, he is not bound by such observances." Omitting those matters pertaining to solitude and silence, it was observed that the angelic Doctor did not say that he is absolutely not bound by abstinences, but rather by certain abstinences, that is, severe ones. And indeed, according to St. Ambrose in *Liber de Elia*, chapter 8, "Fasting" is "the teacher of continence, the discipline of chastity, the standard of men, the purification of the soul, the grace of old age, the custody of youth, the alleviation of infirmity, the nourishment of salvation"; therefore, it is more fitting for a Bishop than for others, since he ought to be perfect among others. Therefore, sobriety is demanded by the Apostle in 1 Timothy, and the Council of Trent, in Session 25, chapter 1, on Reform, prescribes: "that they be content with modest furnishings, and a table, and frugal fare." Moreover, some observed that a severe abstinence could be considered to be daily fasting, which excludes the use of eggs and dairy products; and also those abstinences concerning which the Regular Bishop himself is not able to judge whether they are compatible or not with the episcopal office. Another obligation by which a Regular Bishop is certainly bound is that of wearing the habit and bearing the insignia proper to his Order. For this obligation is openly declared in Chapter 15 of the *Capitularia Clericorum*, concerning the life and duties of a cleric, and is confirmed in the Constitution *Custodes*, which will be discussed later. And its origin lies in the fact that such a Bishop does not cease to be a Regular. St. Thomas, in the aforementioned place, article 8. Indeed.

[*Latin ed. p. 457*]

DOUBTFUL CASE OF A REGULAR BISHOP. 457 In Munich, the habit does not constitute membership, but rather the profession of a regular life, according to the chapter "Porrectum" of the Rule; nevertheless, the habit is a distinctive sign of the status assumed within the visible Church, by which regular clergy are distinguished from others, and their obligations are indicated. With these preliminary remarks, which are commonly presented as certain, the Consultor presented three different opinions of Doc-

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tors regarding the obligation of observing the other rules. The first opinion is that of those who teach that such a bishop is entirely released from this obligation, as Suarez states in *T. 4 de Relig*, tract. 5, § 3, n. 16; Lucarinus in *De Episc. Regular*, c. 2, n. 348; Palaus; Tamburinus; Sánchez, and many others. However, Suarez, distinguishing between Constitutions and Rules, gives the following reasons: "because those (Constitutions) do not obligate, except as precepts of the superiors, or Chapters, of the Religion; but such a bishop is not bound to obey the superiors." Therefore, he is not bound by such *leges*: "for the reason is similar for a written precept, or law, and for a precept imposed by a man; indeed, precepts imposed by men are often more binding; because, as jurists say, one is treated more leniently by the law than by a man." The regular bishop is not bound to observe the rules, because these are laws imposed upon the community; therefore, they bind all those who belong to the same community, and as long as they remain members of that community: the regular bishop, however, does not belong to the community either as a subject or as a superior, therefore he is not bound by its rules. The second opinion is that of Caietan, which has few followers, and which teaches that such a bishop is bound to this observance by a certain propriety, and by a moral obligation, and although the transgression of this observance cannot be excused by any fault, it does not amount to a grave fault, although the Rule may impose it under a grave penalty. Both the first and this second opinion are primarily based on the Canon, *Statutum*, causes 18, q. 1. The third opinion teaches that a regular bishop is bound to observe the rules, which can be consistent with the dignity and the episcopal office, either under a grave or a light penalty, depending on how the rules themselves impose the obligation. And this seems to be the opinion of the Angelic Doctor, who wrote in the aforementioned place, q. 185, art. 8: "Therefore, it must be said that if there are observances in the rules which do not impede the priestly office, but rather contribute to the preservation of perfection."

[*Latin ed. p. 458*]

158. DOUBT REGARDING A REGULAR BISHOP. "Just as continence, poverty, and other similar things are required, so too remains the Religious, even after becoming a Bishop, obligated; and consequently, he is obligated to wear the habit of his Religion, which is a sign of this obligation." And responding to the difficulty arising from the Canon Statutum, he said: "Therefore, to begin, it must be said that he who becomes a Bishop from being a monk is absolved from the yoke of monastic profession, not in all things, but in those things which are contrary to the pontifical office, as has been said." This opinion is followed by Passerinus in the cited passage, by Cardinal Petra, and by a few others. If such a question were presented to a Consultor, it would have to be resolved by external authority, and the first opinion would have to be considered true, which can be regarded

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as the common opinion. Hence, Cardinal Petra wrote in volume 3, commentary on Constitution 5 of Alexander IV, number 32: "However, to this opinion..." to which the calculation of the Doctors has been added, and it is necessary to capture the intellect more by the authority than by the persuasive reasoning. But, considering the reasons, the Consultor believed that the third opinion should be considered true and followed in practice; and the reasons, which we only indicate, are as follows. The obligation arising from a profession to observe the vow of obedience and the rules of one's own Order is, by its very nature, perpetual. It could only cease under three circumstances: either through incompatibility with a newly acquired legitimate status; or through some disposition of canon law; or through a papal dispensation. However, none of these circumstances applies in this case. Not the first, because the rules, which lead simple Regulars to perfection, also apply to a Regular Bishop, who, having been elevated to the office of perfection, must instruct the people and promote them to holiness. The more perfect the Bishop becomes, the more useful he is to the people. Therefore, once having accepted the path of perfection through the determined rules of his profession, he cannot deviate from it. The second circumstance also does not apply. For in canon law, except for the Canon Statutum, of which we will speak below, nothing else is found from which one could be freed from the aforementioned obligation. But the third circumstance is clearly excluded by more documents, and indeed, they openly declare the contrary. And, omitting the letter of Innocent I to Victricius, which we mentioned above, the Consultor cited other documents. Innocent III, Bishop of...

[*Latin ed. p. 459*]

DOUBT REGARDING A REGULAR BISHOP. 459. The Bishop, who, having been taken from the Abbey of the Cîteaux Order, assumed the episcopate, did not observe the monastic observances, and was thus sharply rebuked: "We have been deeply grieved in our hearts, and troubled with great sorrow, because you, as we understand it, act to the detriment of your Order, and to the infamy of our Ordination, in the eyes of many, as an apostate, who, according to Scripture, is called a 'useless man.' For if you carefully consider, we did not choose a simple monk, but an Abbot, to be made a Bishop... you ought to observe that honesty, both in life and in morals, which would be conducive to your salvation, and to serve as an example to your subjects. But, what we greatly marvel at and are moved by, is that you, forgetting your own condition, after having accepted the episcopate, indulge in certain practices which the Cistercian monks consider dishonorable: a padded chair, silk gloves, a broad mitre, and you satisfy your fleshly desires publicly, even to the point of satiety, perhaps to be compared to him of whom it is written, after he was given a coat of skins: 'Behold, Adam has become like one of us, knowing good and evil'....

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We remember, and you ought to remember, how, during your visit before our brothers, we strictly enjoined you to observe the observances of the Cistercian Order, since the acceptance of the pontifical dignity does not absolve you from the vow, from which, although it is an honorable thing, it adds a greater burden to you, so that nothing of religion may be lost, and therefore you should relax the bonds of that order in such a way. Therefore, through an Apostolic letter, we command and urge your Brotherhood to correct your life, and to conform yourself so to the regular observances, that you may not seem to have returned to the world, but rather, that you may despise the world and its vanities. Otherwise, after a warning, punishment will follow." From Innocent III, letter, vol. I, p. 5, page 666. After this golden document, another was added by the Consultor, namely, the Decree of Alexander VII, concerning the residence of Bishops, issued on July 26, 1662, in which it is declared what is the mind of the Holy Pontiffs in raising Regular clergy to the dignity of the episcopate, with these words: "Furthermore, it decrees and declares that the intention of His Holiness is not to absolve and exempt those same Bishops, if they were Regular, from the obligations of their regular profession, and the things attached to it, by the attainment of the dignity and office of the episcopate, except to the extent that the same office..."

[*Latin ed. p. 460*]

460 A DOUBT CONCERNING A REGULAR BISHOP. "Those who, through slowness and the exercise of pastoral care, are hindered, and therefore, whenever it happens through their own fault (may it be far from us), or through some other cause, or through any impediment whatsoever, which is just and legitimate, except for the time prescribed by the Holy Council of Trent, either do not wish to, or are unable to, are not to be considered absolved from the obligation which they undertook through their regular profession, namely, to live within the cloister, and under the obedience of their Superiors of the same Religion, and to observe all and each thing which those who live within the cloister, whether by vow or by prescription of the Rule and Constitutions of their Religion, must, in every way, observe and are accustomed to observe." This decree was further confirmed by Clement XI in the year 1715 and extended to all Regular Bishops who are elected to perform the offices of Apostolic Vicar or Administrator and Visitor in other dioceses. Finally, Benedict XIII, in the Constitution *Custodes super muros*, in 1725, decreed: "We decree and ordain that those who, from a monastic, regular, or mendicant institute, have been, or are to be, raised to the episcopacy or any other dignity, even to the Cardinalate of the Holy Roman Church, shall always and in every respect observe all the offices and obligations of their Rule, which are not at all hindered by the office of the episcopacy, or by any other dignity, or by the office of the Cardinalate, and therefore, they shall always wear the

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insignia of their monastic Order, or of another mendicant Rule, and their proper woolen garments, distinctly marked by their own particular color, and shall also wear, either shaved completely or with the hair flattened on the head, or with a curl and form expressed, a crown, with which they were previously accustomed to adorn themselves and to wear a crown when, within the cloister of their regular Orders, they were bound by their solemn profession to wear such insignia and to wear a crown, from the obligation of which profession they are in no way absolved, nor exempted by any means; therefore, such Bishops, taken from the families of Regular Canons, Monks, and Mendicants, by virtue of the most sacred obedience, we strictly command and order that they observe all and each of the things previously mentioned in our decrees, and that they observe them without fail. If, however, (may it be far from us), they should act in contempt of, or neglect these things, they shall incur the penalty of suspension from the exercise of their pontifical functions, and shall remain subject to this penalty until..."

[*Latin ed. p. 461*]

DOUBT REGARDING A REGULAR BISHOP. 461 "We declare that, until they have repented of their obstinacy, they should not be granted the relaxation of their suspension." It should not seem strange that this judgment was rendered by Benedict XIV, in *De Beatific.* I, 3, chapter 3, number 11. In that place, the Pontiff says: "St. Thomas teaches [2-2, question 88, article 2, and question 185, article 8] that those who are received into religious orders are bound to observe the regulations of their order, which do not impede the pontifical office, and that this extends to those who are raised to the cardinalate, according to what is found in Dominic, *De Ecclesia Christi et Papa*, section 18, question 9, volume 10. Max. Bibliotheca Pontificia." And it would be imprudent to doubt the truth of this opinion after the Constitution *Custodes*, issued by Benedict XIII in the year 1723. However, there have been Doctors who have doubted this obligation, among whom is Andreuccius, *De Epis. Titidar.*, paragraph 3, numbers 168 and 165. This author, preceding St. Alphonsus, and treating this question not in passing, says among other things: "But in the aforementioned Constitution (*Custodes*), it is not expressed whether the [Bishop] is bound by law to observe [the Rule] under a grave penalty, or only by law of honesty and decency, as Caietanus taught formerly... if we are dealing with a law that is odious and penal, it should not be extended beyond the case expressly stated, as is clear from rule 49 in 6, especially because otherwise there would be a manifest correction of the Canon, *Statutum caus.* 18, question 1, and the Glosses added there, and of almost all the Canonists who, according to the aforementioned Canon, teach that the Bishop is absolved from the yoke of the Rule, that is, as Rotharius has most recently interpreted, absolved from the obligation of observing all and each of the rules, under at least

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a grave penalty. But a correction of the laws is not to be presumed easily, from Chapter *Ecclesia de elect...*" St. Alphonsus, treating this question in passing, and relying on the authority of the older Doctors, and the oftencited Canon *Statutum*, considered the opinion that completely absolves the Bishop from the yoke of the Rule to be more probable. Therefore, the Consultor presented opposing arguments; and since the principal foundation of this opinion is the Canon *Statutum*, according to which a monk is absolved from the yoke of the monastic Rule, he examined that Canon. Therefore, he inquired whether the Canon in question is found in Gratian's *Decretum*. Furthermore, he was ignorant...

[*Latin ed. p. 462*]

462. A QUESTION REGARDING A REGULAR BISHOP. It is doubted by some, due to an insertion made by Gratian, whether provincial canons, and other sentences of the Holy Fathers, possess the force of universal law. For they claim greater authority for themselves than they derive from the sources from which they are drawn. Indeed, the sentences of the Fathers, and the canons of provincial councils, which are contained in Gratian's Decretum, ought to be received with great reverence, but they will have the force of universal law only when those sentences and canons have been adopted as their own by the ecumenical councils, or by the Decretals and pontifical constitutions of the Holy Pontiffs. The canon in question is from the provincial council of Altheim in Raetia, held at the beginning of the tenth century, and its genuineness is furthermore doubted by critics, although Berardi considers it genuine, in his work *Gratiani Canones genuini, ab apocryphis discreti*. Considering these and other things, the Consultor concluded that that opinion should be rejected, and that it has no probability, which is based on a canon of a provincial council, whose genuineness is furthermore doubted, and which is opposed to the Decretals and constitutions of the Holy Pontiffs. Thus is the opinion of which we are speaking. Therefore, etc. Furthermore, the Consultor presented other opposing reasons, and especially those which were brought forward by Andreuccio. He observed that this author was mistaken in two false assumptions. Firstly, he wrongly assumes that Benedict XIII had promulgated a new law, and that the canon in question is a universal law. As has been said above, it does not follow that because a constitution is not a new law, a new obligation is not introduced. For the force of those regulations is not dissolved which are consistent with the episcopal dignity and office; not by any legal principle; and much less by the opinion of the Holy Pontiffs, who have never wished to exempt a bishop from the observance of the rules in such a case. Furthermore, by virtue of this obligation, Benedict XIII, in virtue of holy obedience, commanded that regular bishops, or cardinals, should prefer the insignia and proper garments, and also the *rasonem*, distinct by their own color, and the crown, etc. The Consultor considered that the penalty

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of suspension was to be understood as referring only to the contempt of this particular injunction. Therefore, those regular clergy, by virtue of the obligation assumed through their profession, and not by a new obligation, are bound to observe the rules, whether with great or with light severity, as the rules themselves prescribe.

[*Latin ed. p. 463*]

DOUBT CONCERNING A REGULAR BISHOP. 46. Furthermore, it is falsely asserted that the Statutum Canon has the force of universal law, a force it could not have derived from the Fathers of a provincial council, nor from Gratian through his collection, to which such authority was never granted by the Holy See; nor from the Holy Pontiffs, who never included that canon among the Decretals or Constitutions; nor from the Doctors, who cannot attribute such force to it. Therefore, it is not a question of correcting a pre-existing law, as the praised Author supposed; but only of correcting a doctrine commonly received by Authors, to whom that authority is attributed to the Canon; and, as is customary, one follows the other. Finally, the Consultor responded to that argument, which was subtly devised by Suarez. And concerning the first part of the argument, which we mentioned above, regarding Constitutions made by the Superiors of the Order, or Chapters, the Consultor distinguished between general Constitutions that preceded, and those particular ones that followed the attainment of the episcopate. Furthermore, the Consultor considered that the Bishop remained subject to the former Constitutions; but not to the latter, because at that time, by chance, the Regular Bishop is released from the authority of his Superior, in whose place the Supreme Pontiff succeeds. But concerning the opposite part of the argument, which Suarez expressed thus: "The reason is, because that rule only obligates, as if it were a certain law imposed upon this community; therefore, it only obligates the persons of this community, as long as they are members of that community, because every law, for a community, is first intended for it, and therefore it speaks only to those who are parts of that community; but the Religious, by the very fact that he becomes a Bishop, ceases to be a member of such a community, because he is neither subject nor Superior of it," thus responded the Consultor: "It is true that the general principle is that laws obligate subjects, as long as they remain in the community, or territory, so that the law affects subjects through the territory, and according to the principle of law, 'extra territorium ius dicenti impune non paretur' [one does not obey the lawgiver outside the territory]. However, these things cannot all be applied to our case, in which the Rules and Constitutions, by the authority of the Roman Pontiff, directly and immediately affect the persons of the Regulars, wherever they may be, whether in the monastery or outside; therefore, as long as one remains a Religious, he is bound by the

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rules. But the Rules,

[*Latin ed. p. 464*]

464. A DOUBT CONCERNING A REGULAR BISHOP. Those things which pertain to Religious individually do not apply to them immediately, but insofar as they live in community, such as the rule regarding entering the monastery at fixed hours; requesting permission from the Superior for going out, etc.; but the Bishop, who is no longer a member of that community, remains free from such rules, which concern the manner of living in community. Having rejected these difficulties, in order to mitigate the rigor of this opinion, which might seem, at first glance, to be very harsh, the Consultor noted the following. The authors who follow this opinion also teach that Religious Bishops can dispense with the rules for themselves, just as Superiors of Orders can dispense with the rules for themselves, and for their subjects; so that it may not be said that a Bishop is in a lower condition in this matter than a simple Religious. However, this manner of speaking did not seem to the Consultor to be worthy of approval. For the Bishop remains bound by the rules, and therefore he cannot dispense with them for himself; nevertheless, the Consultor considered that the Bishop, considering the circumstances, in cases that arise, can prudently judge whether the obligation of the rule ceases. In this sense, St. Thomas speaks in the aforementioned place, question 185, article 8: "In others [rules], however, it is possible to use dispensation, according to what necessity requires, either of the person, or of the office, and of the condition of the people with whom he lives, in the manner in which also the Superiors of Religious Orders dispense with such things." These reasons, which are recounted by the Angelic Doctor, namely, the necessity of the person (of the Bishop), or of the office, and the condition of the people with whom he lives, for which he can prudently judge whether the obligation of the rule ceases in a particular case, are reduced to one, as taught by Palearius in *De triplici statu hominum*, question 85, article 8, number 157, with these words: "For indeed this rule is certain, that the Bishop is free from the obligation of the rule, either in general, or in particular cases, whenever the observance of the rule hinders him from the exercise of his office; the necessity of the person, or of the circumstances with others, is also reduced to the necessity of the office, because both the strength of the person, and honest intercourse with others, are necessary in the Bishop for the perfect exercise of his office. Moreover, where no impediment to the office arises from the observance of the rule, there is no reason why the Bishop should not be bound to that which he promised in his profession."

[*Latin ed. p. 465*]

DOUBT CONCERNING A REGULAR BISHOP. 465 After all these

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things, the Consultor did not fail to note that the rules to which bishops are bound should be reduced to a few. For, after removing the rules that pertain to the duties of religion, those that relate to the common way of living, and those that are contrary to the episcopal office and dignity themselves, only the rules that prescribe prayers, fasts, and other mortifications remain. Furthermore, it can prudently be judged in particular cases whether one is bound to observe them. Therefore, having thoroughly and learnedly discussed all of these things, the Consultor believed that the doubt in question could be answered as follows: "Affirmatively, in this sense: that is to say, a Regular Bishop is bound to observe the rules of his religion, which determine the matter of the vow of poverty; also, he is bound to observe other rules and observances that do not conflict with the dignity and office of a bishop, with the same grave or light obligation with which he was bound before he attained the episcopal dignity; so that, however, it may be possible to prudently judge in particular cases whether these are best suited to the dignity and office of a bishop." The Consultor believed that the Holy Congregation might add the following: "and consult B. Thomas 2 2 q. 185 art. 8, which states: 'in others [rules], however, one may use dispensation according to what necessity requires, either of the person or of the office, and the condition of men with whom one lives, in the manner in which also the Prelates of religions dispense with themselves.'" This opinion of the Consultor was deemed worthy of approval by the Holy Congregation, as follows: Doubt. "Whether and how a Regular Bishop is bound to observe the rule which he has professed." RESOLUTION OF THE DOUBT. — The Holy Congregation, after deliberations held on May 6, 1864, decided to respond as follows: "Affirmatively, according to the prescription of the Constitution of Benedict XIII, beginning with the word 'Custodes,' namely, that a Regular Bishop is bound to observe the rules of his religion, which determine the matter of the vow of poverty; also, he is bound to observe other rules and observances that do not conflict with the dignity and office of a bishop, with the same grave or light obligation with which he was bound before he attained the episcopal dignity; so that, however..."

[*Latin ed. p. 466*]

466. A DOUBT CONCERNING A REGULAR BISHOP. From cases prudently considered and in accordance with duty, one gathers: whether it is possible for them to give judgment in ecclesiastical matters, when they convene. I. A Regular [Canon] raised to the Episcopate, although separated from the monastery, does not cease to be Regular. II. Therefore, he is, in consequence, not released from the obligation of the vows according to the Rule, although the terms of the relationship of the vow of obedience may change. III. Indeed, he is to be held to the observance of the Rules, which are compatible with the person who is separated from the community and

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raised to the Episcopate. IV. Such obligations are to be understood in such a way that, in the event of a conflict between the regular state and the dignity and office of the Bishop, the dignity and the episcopal office prevail, with the prudent judgment of the Regular Bishop himself preceding in the existence of this conflict. V. For it does not befit the espoused Church, which is free, to be subjected to inconveniences and burdens (1) because of the singular vows of her Spouse, and singular laws. VI. Moreover, all of this can easily be extended to Religious who, by the institute of simple vows, have been raised to the Episcopate. For the same reason for obligation seems to apply. A CONTRACTUAL AGREEMENT. On February 22, 1861, and May 17 of the same year. Summary of the case. The general administrator of the pious places found in the town of A. had obtained the approval of the Sacred Congregation for Extraordinary Affairs and the Apostolic See, so that a certain property called "La Clausura," belonging to the sodality of the Most Holy Cross, could be publicly sold. Therefore, after the edicts were promulgated, the highest and best bidder was Peter, who offered the price of 425 scudi; for, from his (1) See page 227 in the note in which the Resolution of the Sacred Congregation concerning the acquisition of goods for the benefit of the Church is mentioned.

[*Latin ed. p. 467*]

STIPULATION CONTRACT. 467. By expert estimation, the land was valued at 3,200, and Peter had not doubted that the increase in the tax was more than one hundred above five. Therefore, the matter was again presented to the Most Reverend, and on March 30, 1838, a decree was issued, authorizing Peter to properly enter into the contract, but reserving the right of the twentieth and sixth installments, which were demanded on August 17 of the same year. By a notarial act, the instrument of sale was duly completed. However, on the following day, the 29th of the same month, Joseph appeared before the Curia, offering 71 tax installments from the sixth installment, in addition to the sum of 425 offered by Peter, and on September 1st, he added another 25 tax installments from the twentieth (namely, the subsequent grade), so that the total value of the land, including the tax installments, amounted to 521. This offer, along with a copy, was announced to Peter on September 29th. The offer was accepted; but this announcement of the same year was neither brought to Peter's home, nor was it personally delivered to him by the public appraiser, but was left with his wife. Nevertheless, Peter, being the plaintiff, requested that Joseph be granted the sale of the land. Therefore, on July 13, 1840, the Sacred Order declared that the land should be sold to Joseph, with this condition: "unless Peter accepts the increase offered by him (Joseph) within the specified term from the date of notification, which is asserted to have been given." Since the Ordinary, to whom the decree for the execution of this matter had been sent, had notified Peter, and nothing further had

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been offered or opposed by him, the land was awarded to Joseph; who received it to cultivate, but without any instrument or written agreement of sale. After this, Joseph undertook several acts, by which he renounced his rights over the aforementioned land, either for the benefit of this person, or for another, while at the same time retaining the land, and thus, the association between the tax installments of six in each hundred, according to the price, which was the tax installment of 521, was settled. We consider it superfluous to further elaborate on these acts; for as far as the present matter is concerned, they seem to have indicated the same. With matters remaining in this state, in the year 1859, both Joseph and the sons and heirs of Peter (since Peter had in the meantime passed away) separately approached the Sacred Congregation, so that an instrument of sale might be permitted for each of them, with the other being rejected. The Sacred Congregation, before the heirs of Peter, rather than Joseph,

[*Latin ed. p. 468*]

468. OF THE CONTRACT OF STIPULATION. Conversely, he sought the opinion of the Ordinary regarding the truth of the prayers and considered his judgment. The Ordinary carefully recounted all that had transpired from the beginning up to that time, and finally concluded that the Sodalitium should freely restore the property, both because of the defects and flaws that had occurred in this transaction, and also because of the rights and claims that the Sodalitium had acquired through the mediation of Joseph. After giving notice to the parties concerned to bring their respective claims before the Religious Order, and after these claims had been received, and with the Sodalitium remaining silent, the question was put to a consultation as to whom it should be permitted to carry out the instrument of sale, according to the doubt, the formula of which is read here at the end.

A SYNOPTIC DISCUSSION. WHAT REASONS DID JOSEPH PRESENT? – He therefore maintained that the contract of sale had been perfected in his favor; since, when dealing with a consensual contract, writing and an instrument are not required for the substance of the act, but only for its mere integrity (1). And he demonstrated that the sale had been consummated by the fact that in that transaction, there was no lack of consent, the thing, and the price: although he had not, in fact, paid the latter, nevertheless (which is the same thing) it had been agreed and determined that, in its place, Joseph would pay interest of six shillings per hundred per year on 521 shillings, which he was still paying. He then refuted and dispelled various objections that might perhaps be raised, which we consider it superfluous to expound here in detail and specifically.

(f) Voetius writes in *Pandectae*, Book 18, Title 1, on Contracts of Sale, § 1: "A sale is a contract of good faith, constantly agreed upon, in which it is agreed that merchandise shall be exchanged for a price. Three things

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are required for its substance: consent, the merchandise, and the price; if one of these is lacking, there is no sale." Peretius uses almost the same words in *Institutiones Imperiales*, Book 5, Title 24, § 2. And that in consensual contracts, writing is not necessary, is stated by the Emperor in *Institutiones*, Book 3, Title 23, on obligations: "Therefore, obligation is said to be contracted by these means (in sales and purchases), because neither writing, nor the presence of all parties, nor the giving of anything is necessary for the obligation to take effect, but the consent of those who conduct the business is sufficient."

[*Latin ed. p. 469*]

STIPULATION CONTRACT. 469 Having made these stipulations, it was held that the matter could not be considered entirely complete, so that the Sodalitas could rescind the contract. For it happened that this rescission could not occur (1) without a considerable detriment to Joseph himself: for good faith must be observed by all, and especially by the Church; and all the more so when dealing with simple and rustic people (such as Joseph), who are ignorant of the subtleties of the law: moreover, he had entrusted himself to the Administrator and to the Ordinary, who represented the seller, and he had fully acquiesced in what was done through them.

THE ARGUMENTS PRESENTED BY THE SONS OF PETER AND THE HOLY CONGREGATION. — They maintained, above all, that the closure of the fund had been previously deliberated with their father, and therefore the instrument had been lawfully celebrated through the acts of the Notary, of which they presented a copy. Although they did not deny that the twentieth and twenty-sixth installments had been due at the appropriate time, they nevertheless maintained that this stipulation had not been fulfilled at that time. Therefore, after the term of twenty days for the twentieth installment and three months for the twenty-sixth installment had elapsed, the Sodalitas would have lost all right to complete those installments. Furthermore, they demonstrated that the twentieth and twenty-sixth conditions had not been fulfilled at the appropriate time, by pointing out that the notification, which was objected to, had been made by the intermediary, and not personally to Peter (2), since it had been delivered to his wife at home, and moreover, Peter himself had not made any declaration by which it could be proven that the offer made by Joseph had been accepted or rejected by Peter, as the first deliberator. Furthermore, to demonstrate the greater extent of their rights, they alleged that Joseph had renounced all his rights with the permission of the Holy Congregation to a certain Aloysius, and that Aloysius had in turn properly transferred those rights to the heirs themselves. Therefore, even if there were no reason to consider the "Comperti iuris est" (as the Rota states in iii Romana stipul. Instrum. 26 June 1850, before Bonini §. 8 at the end), "in even those contracts, in which, if the matter is complete, there is no more room for repentance, no room for

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repentance exists once the matter ceases to be complete, as Voet and others teach." (2) In the Motu-proprio of Benedict XIV, beginning "Essendo 6ew" 22 November 1842, it is written: "It will, however, be the obligation of the deliberator to ensure that he personally notifies the first deliberator of the addition he has made and of the deliberation obtained." See page 254 §. V.

[*Latin ed. p. 470*]

470. CONTRACT OF STIPULATION. In the year 1838, Peter entered into an agreement with a certain association; however, those who claimed to be mediators for Joseph, the assignees, asserted that they had entered into the agreement on his behalf. After presenting various points and considerations of importance, along with other matters of lesser value, to both parties, on February 22nd of the year 1861, the matter was brought before the Most Holy General Council, and the Fathers, after deliberation, issued the following decree: "Concerning the stipulation of an instrument, let it be permitted." RESOLUTION OF THE DOUBT. — After discussing the matter, the Congregation decided to respond in the affirmative, favoring the brothers (the sons of Peter) for the sum of 521 scudi, pending a new examination of the sixth point. CONTINUATION AND UNFAVORABLE OUTCOME FOR THE SAME CAUSE. — Joseph considered himself burdened by this resolution, and therefore petitioned and obtained a re-examination of the previously proposed question. In this new proposal, with both parties displaying intense zeal, two Advocates of the Roman Curia, one for Joseph and the other for the heirs of Peter, presented their arguments to the Fathers in a written form. Consequently, the debate was renewed; and on May 17th of the same year, the Congregation maintained its previous decision, and in order to prevent the matter from being raised again, responded with the customary formula: "In the previous decision, and so it remains." CONCLUSIONS: I. A contract of sale is perfected simultaneously with the concurrence of the object, the price, and the consent. II. However, more formalities are required for the proper execution of contracts concerning ecclesiastical matters. III. In a series of actions that must be performed before an instrument is finalized, if a flaw or defect should arise, the Holy See holds that those actions that were properly performed before the flaw or defect occurred are valid; however, those actions that rely on the flaw or defect itself, and those that follow from them, are to be rescinded and annulled. IV. The Church cannot grant absolution when a matter is not whole and complete. V. Although, by the initiative of Benedict XIV, the first deliberative notification concerning a new offering was made by the second group of offerers...

[*Latin ed. p. 471*]

STIPULATION OF A CONTRACT. It is declared that this must be entirely carried out; nevertheless, the Sacred Congregation considered that

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the renunciation had been made personally, and that the comparison was completed at home, with a copy of the offer left in the hands of the wife. VI. However, the Sacred Congregation did not consider the sixth [vow] to have been validly offered, but admitted it to the augmentation of the twentieth [vow] (1). I X S. CONCERNING THE RESTORATION TO INTEGRITY AND THE NULLITY OF THE PROFESSION, OR THE DISPENSATION. Dated January 23rd and April 23rd, 1864. Summary of the case. In the year 1844, Session 25, chapter 19 of the Regulations, Titius, in the Regular Order A, made his religious profession; in the year 1849, he put on the habit and then petitioned for perpetual secularization, which he obtained for just reasons from the Holy See, retaining only the vow of chastity; in the year 1860, he petitioned that his religious profession be declared null, as if it had been made under duress and fear. Following the customary requests to the Ordinary, so that a regular process might be completed according to the Constitution of Benedict XIV, this process was not completed due to particular circumstances. Therefore, the Most Holy [Father] approved that, notwithstanding said Constitution, and other contrary things, a process be completed in Rome before the Pro-Secretary of the Sacred Congregation, with the assistance of the Defender of the religious profession ex officio, without other formalities, but solely by examining the truth of the facts. Therefore, a judicial examination was held, in which Titius was present, who also produced certain letters concerning his profession, and also Titius's brother, Gaius, who, in the same Regular Order A, had made his profession long before Titius. (1) Another defect that occurred in the present contract was that the sixth [vow] was offered immediately after the twentieth. However, the sixth cannot precede the twentieth, because it is considered as a restoration to integrity; regarding this matter, see page 254 and also Appendix XVII.

[*Latin ed. p. 472*]

472. RESTITUTIONS. IN WHOLE. AND NONE. PROFITED OR GAINED. When certain witnesses, namely Titus, who named his brother Sempronius, a parish priest, and four religious men from the same Order, residing in various monasteries, were mentioned, letters were sent to the respective local Ordinaries so that they would receive the depositions of these individuals according to the manner and questions prepared by the aforementioned Defender of the Profession; as indeed was done. What was contained in these depositions, and which were confirmed under oath, is related in the following discussion. Since the period of five years required for appealing had elapsed (1), one of the two doubts was set aside, which is found at the end. When the cause was to be presented to the Most Holy Office, two consultants were requested, one a theologian, the other a canonist (2), to express their opinion, which opinions, together with the records of the process, were sent to the Defender of the Profession,

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so that he might make his observations in favor of the aforementioned Profession (3). The consultants, after carefully considering all matters, arrived at the same opinion. We shall briefly mention the opinion of the canonist, which was so accurately formulated that it could be considered a model in dealing with similar questions, which are based on fact. The entire opinion of the canonist is summarized below. The consultant, acting on the merits of the cause, or on the main point of the nullity of the Profession, stated that the nature of a religious Profession requires that it be made with full freedom, as is read in chapter 1 of "De Regularibus." No one shall be tonsured unless at the legitimate age, and with spontaneous will: and since nothing is more contrary to this free and spontaneous will than fear, which causes the professed to say, out of fear, that he approves of what he hates. The following chapter, section 5, concerning vows, states: therefore, it cannot be doubted that a religious profession obtained by force and fear has no value, chapter "De iis quae vi," and chapter "Cum verum," in "De Regularibus," at the end. This same rule had already been established by St. Leo I and by (1) See page 31. (2) The theologian was Father Anacletus of the Holy Minor. The canonist was Bishop Ludovicus Iacobini, consultant. (3) See page 209 in the notes.

[*Latin ed. p. 473*]

RESTII " . IN INTEGR . ET NULL. PROF. S E U DISP. ¿73 The Council of Romano, under Pope Eugenius, in the Canon concerning Virgins; and again, the Holy Council of Tridentina confirmed it, Session 25, chapter 19, concerning Rules. However, not every fear invalidates a profession, but that fear which is grave and which leads a steadfast man to fall. Jurists, in their investigations, determine and illustrate the signs, conditions, and degrees of such a grave fear, among whom is Fagnanus, in the chapter mentioned. Concerning those matters which occur by force, see chapter "If anyone." Concerning Rules, see chapter "No one" in the same title. Concerning Vidua, see the same title. However, whether a fear is grave or light must be determined not absolutely, and in the abstract, but respectively and in the concrete, according to Law 3 and following. From these causes, the greater – there – «Fear, as a cause,» seems to be present «in him who is terrified by a just fear of death, or of bodily torments,» etc., and this is understood from his affection. This is what all Doctors have taught, and the Sacred Congregation has affirmed many times, especially in Theanen. Restii, in integr., November 23, 1782. Therefore, the Consultant concluded that it is the duty of a prudent judge to determine whether the fear is light or grave, and whether it leads a steadfast man to fall, and this must be ascertained from all the circumstances of the case, among which are, of course, the condition and nature of the one who experiences the fear, the manner and reason of the fear instilled, and the quality of the person who instilled the fear. Indeed (the Consultant continued), if all these things are

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kept in view in the present investigation, it cannot be doubted that the fear instilled in the mind of Titius was grave, so that it is capable of invalidating solemn vows: for from the entire series of events, it will appear that, in his youthful age, he was compelled to enter Religion by importunate and repeated persuasions of his brother, to whom he was most obedient, and to whom he dared not contradict; and that, throughout the entire period of probation, he remained under a certain fascination of the mind, and finally, with great disturbance of his mind, he made his religious profession. In order that this may be more easily and clearly recognized, the Consultant investigated: I. His entrance into Religion. II. His novitiate. III. His profession. IV. The life he lived up to the time of his secularization, from which the entire history of events appears. CONCERNING COERCION IN ENTERING RELIGION. — In the judicial examination, Titius recounted this: «I believe that my entrance into Religion, up to the time of my profession, was neither free nor spontaneous, but was the result of…»

[*Latin ed. p. 474*]

474. RESTITUTION. IN WHOLE. AND NOTHING. PROF. OR DISP. "But from fear and oppression of the spirit, arising from various circumstances and persons. When I was staying in a small seminary... (in which, for three years, I had made considerable progress in the study of letters), I gave a slight offense to a teacher of the humanities, and aroused his indignation, because I refused to ask for forgiveness. From this arose a reciprocal aversion of spirit, which grew so much that we, with my other companions, swore that we would not go to that school. But at a pressing time, I should have left the seminary; at that time, my brother, named Caius, who had already made his vows as a Regular in the monastery of B, began to persuade me to embrace the same institute, adducing these reasons: that our Father, who was of the most rigid character, would have destined me for some very harsh penance, which is called in French *la piaque*... and that, since I was devoted to profane reading, especially to the Latin authors, with which I was greatly delighted, I would ruin my soul. He also added that, because of the lightness and flexibility of my mind, I would be subject to all kinds of deceptions in the world, and that I would never be able to attain a stable position in society. Conquered by these persuasions, I entered the monastery of B as a novice. This narrative is corroborated by the testimony of Brother Caius, who was the author of this coercion; for he testified: "I cannot deny that I have spoken to (Tilinna) several times, exciting his vivid imagination with religious incentives, and describing the happy things that would befall him if he dedicated himself to the aforementioned institute." These are confirmed by a letter that the same Caius wrote to his brother Titus on February 13, 1861, which was examined by the Secretary of the Sacred Congregation of the Council, and whose truth he confirmed under oath (1). (1) In this letter of Caius,

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the following was contained: "I declare that my brother... entered the novitiate... at my urgent solicitations, and that these solicitations must have had a very powerful moral impact on his ardent character, and on his young age: he was only sixteen years old. I was then part of the family of the novitiate, and I must declare that, with the experience I have today of religious life, I see very clearly that I was mistaken in the assessment I made then, and that I have continued to make for the two or three months that he remained in the novitiate, regarding his vocation to our Order of brothers..."

[*Latin ed. p. 475*]

RESTIT. IN INTEGR. ET NULL. PROF. SEU DISP. 475. As Barbosa, in *Consilia Matrimonialis, Diversa*, p. 1, cons. 2, n. 4, teaches, the confession of a brother who inspires fear should be considered. This is also found in *Illota, Coram Emerix, Iunctiones, Decisum*, 225, n. 10, 11, and in the recent *Decisum*, 643, n. 8, page i. To this is added the testimony of Sempronius, another brother of Titus, given in a judicial examination, and confirmed by oath in his letter, which among other things contained: "Furthermore, I clearly remember that our brother Titus attracted you to the community, by speaking of your family's reputation." From all of these things, the Consultor deduced three certainties: 1. That Titus was induced to embrace the religious state through vivid and frequently repeated persuasions and solicitations. 2. That these persuasions undoubtedly exerted a more powerful influence on the mind of the one being persuaded, because the author of these persuasions was his own older brother, a blood relative, and a professed member of the Religious Order, and for this reason, he held great authority within the entire family, and especially over his younger brother. 3. That threats and the dangers of impending evils could not be separated from these persuasions, namely, that unless he embraced the religious life, his condition in his father's house would be harsh and difficult in the paternal workshop. Furthermore, on the one hand, the urgency of the matter greatly pressed, if not vexed and oppressed, while on the other hand, reverence and obedience to the person making the request rendered him timid and fearful, and unable to boldly contradict the request; these two causes combined are said to have extorted consent from a prudent and steadfast man. This has already been noted by Ciarlinus, in *Consilia*, 108, n. 3, speaking precisely of the reverential fear of brother Porteli. Also, in *Consilia*, 32, n. 3, p., and Pignatt, *Consilia*, 173, n. 30, and 151. Indeed, the Rota, in the *Merlino Decisum*, 491, specifically affirmed, with the testimony of Pignatelli, that reverential fear alone is sufficient to invalidate a profession, due to the great freedom that such an act requires. This coercion and apprehension of evils, with which Titus entered the monastery, must have exerted even greater force on Titus's mind, since he certainly knew his father's most severe nature. Regarding this, Sempronius recounts the

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following in his sworn letter: "Our father, although honest, was so severe and sharp-

[*Latin ed. p. 476*]

476 RESTIT. IN INTEB. ET NULL. PROF. SEU DISP. » certain things appeared to exist only to terrify his children. Always angry, scolding, and cursing, he made our paternal home a most severe prison. He persuaded our sisters and our brother that they had died not from natural illness, but from the harshness of the paternal home in which they had lived for so long. If we did not flee when the time came to go to school, we cheerfully set out, and upon completing our studies, we returned home very sad. These persuasions, anxieties, and threats are all the more to be considered if one takes into account the character, age, temperament, and condition of Titus, which must be carefully considered, as stated in Rota decis. 202 n. 6 recent. The Consultant in the case argued that we were dealing with a young man who was endowed with a vivid imagination and a restless mind, as the witnesses testified with one voice; a young man completely ignorant of the realities of life. The Consultant maintained that it should not be concluded that moral coercion was lacking simply because the most severe scoldings, beatings, and threats, made with a grim face and a fierce spirit, were absent. For not everything that constitutes a serious object of fear is defined by law. Indeed, it is possible, considering the character and temperament of the one who is subjected to the influence, that moral motives may have a more powerful effect than physical means. Having established the moral coercion by which Titus entered the religious life, it was easier for the Consultant to prove the other points. For it is difficult to achieve a good outcome when something has been begun with evil intent, as St. Leo says in Can. Principatus prim* quaest. 1. CONCERNING COERCION IN THE NOVITIATE. The period of probation, which comprises almost eighteen months, included two distinct epochs, the first of which, lasting six months, Titus spent in the convent of B. in Gaius, and the second, of one full year, in another convent, C., in Sabaudia. Titus himself described the first epoch and the series of events as follows, under oath: "Influenced by such persuasions, I entered the convent of B. as a novice. But having experienced the harshness of this institution, I decided to leave it. Therefore, I approached the superior, who showed himself ready to return to me my secular garments, which I had laid aside. However, as I approached to receive them, my brother Caius, who lived in the same convent, learned..."

[*Latin ed. p. 477*]

RESTIT. IN INTEGR. ET NULL. PROF. SEU DISP. 477 "With firm determination, he endeavored to dissuade me from that purpose," and, leading me into his chamber, he detained me there for two hours, saying, "with paternal authority (as he claimed) received directly from the Father," "I do

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not want you to leave here." And returning to his persuasions, he instilled in me the fear of incurring the severity of the Father, who had appointed me to carry out this task (the pious one), and that I would become a laughingstock of the world, being called "Moine défroqué" by everyone; while he, on the other as, was completely convinced that God was calling me to this state, that I was a boy who understood nothing, incapable of governing myself. Faced with these anxieties and counsels, I remained perplexed; but I never showed myself to be obedient to the strictures of the monastic discipline, so that I was subjected to continuous and severe penances... and mortifications, which utterly repelled my nature. My brother, noticing that I was resisting without any improvement, seized the opportunity when Brother N. passed by, etc. To this account, further light and credibility were added by what the brother, the author of this coercion, testified under oath, which, along with other observations made by the Consultor, can be omitted. Therefore, the Consultor stated that, if Titius remained in the religious order, it was not due to a free persuasion, but rather to a fascination of the mind; not to a choice, but to a coercion of the will, which anyone can easily persuade themselves of, if they carefully consider the words, arguments, and circumstances of the aforementioned account. However, throughout this entire time, he demonstrated a will entirely contrary to that state, by the very nature of his life. And for this reason, his brother obtained that Titius be sent to the monastery of Sabaudia, believing that he would be more suited there as a novice master. In this new monastery, C. in Sabaudia, Titius again began a period of probation. What happened to him, and how he behaved, he himself described in the judicial examination: "Although my brother was absent, he nevertheless insisted that I persevere in the probation until the religious profession, through letters sent to me and to the novice master, in which the master urged me to suppress my perplexities, my hesitations, and any doubt expressed: and indeed, I made it quite clear to the master on several occasions that I did not find that way of life pleasing. But he, in response, the Gros Bekiant, a great beast..."

[*Latin ed. p. 478*]

"They claimed that I was weak-minded, and that the judgment concerning my vocation belonged not to me, but to them; and thus, they either prescribed a penance of some kind, or they sent me to the garden to dig in the earth. They thought, wrongly, that by showing me books to read – containing terrifying accounts – which I had to read as lessons, they would overcome my resistance. In this state of spiritual turmoil, filled with scruples, the day of my profession arrived. On the very morning before my profession, I made a sacramental confession before the same Master, and I declared to him that I was approaching the act of profession with reluctance; furthermore, that I did not feel a true vocation to that way of life. But the Master, repeating the same words as before, commanded me

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to proceed with the act of profession with a firm spirit, as others of my brethren had already done, adding that he, before God, was certain of my vocation, and that I should distrust my own imagination, which had led me astray. Amidst these spiritual anxieties, having received sacramental absolution, I immediately proceeded to perform the act of profession."

"Having recounted these and other things," the Consultor observed, attentive to the history of the facts, "there is no reason why these matters should be called into question, even though only the Complainant relates them. No one else among the witnesses could recount these things, except for the Master, who, however, was not questioned about these particular matters; and just as he did not affirm all of these things in his deposition, so neither did he deny them. Although it is sufficient to establish that there was violence before the profession was made, as Hondet observes in *Cons.* 29, n. 40; Sperell, *Decis.* 80, n. 8 *seq.*; *Rota coram Lndov.*, dec. 326, n. 30 *seq.*, and in a recent decision, 211, par. 13; for during the time of fear, an act performed under that fear is considered to have been carried out under that previous fear; nevertheless, there were elements in the case that showed that a moral coercion had begun, and that the fascination of the mind persisted throughout the entire period of probation. Indeed, when his brother Caius was questioned about this matter in court, he replied: 'Although we were far apart, I did not fail to write to the Master of the novices two or three times... I also wrote to my brother two or three times, always insisting on the same arguments, which I had already presented, and using the same methods...'"

[*Latin ed. p. 479*]

RESTITUTION, INTEGRITY, AND NULLITY. PROF. OR DISP. 47$. B. in Gallia: however, it seems to me that in one of the wombs [i.e., in one of the circumstances] I have found, that if he himself did not recognize that he was called to the religious state, he would go to the college of Meylhani (to pursue his studies) (1). From this context, however, the following seemed certain to the Consultor: namely, that Caius, although absent from the community of Sabaudia, had Titus residing there, and that Titus, although present there, was subject to pressures and incitements, to which his mind, already burdened, could much less resist in this new home, where, far from his own people and surrounded by those who were obligated to influence his will, he could expect no comfort or help from anyone. Furthermore, the Consultor concluded that, since moral coercion had once been introduced, Titus should never have been abandoned, and that his vows should be considered invalid, since they were lacking the necessary freedom. However, since this conclusion seemed to be contradicted by the testimony of the Master of Novices, the Consultor called that testimony into question. And the testimony was as follows: "As far as I know, Titus was not compelled to make his religious profession, neither by fear, nor

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by threats, nor by any subtle influence or weakness of character. I believe that his vows were perfectly free, just as his act of profession demonstrates before the entire community. The community, having been convened three times during Titus' novitiate to render judgment, always gave favorable votes to him; and there was never any objection raised to his vocation." Therefore, among other things, the Consultor observed that it should not be surprising if he, who guided Titus for a whole year of probation, and who, with his own encouragements, spurred him to make his profession, asserts that "his vows were perfectly free" – he might be mistaken, just as he mistakenly said that Titus' profession was free from any [coercion]. (1) To this last statement, the following words are added, which are found in Caius' letter, as mentioned above in the note. In that letter, after Caius has confessed that he, through deception, strongly urged Titus to move to Sabaudia, he adds the following about the letter: "But I must declare that my letters, whether addressed to the R. P. Master, or to my brother, while hinting at the possibility of Meylhani, obviously made the balance lean towards the first possibility of the alteration." These words, the Consultor observed, clearly indicate that this possibility was never truly considered.

[*Latin ed. p. 480*]

480. RESTITUTION. IN WHOLE, AND NULLITY. AND NO EFFECT. OR DISPENSATION. Neither does the deposition of the same Master acquire validity from the added reason – as the act of his profession makes his faith before the entire community – for the Doctors unanimously hold, and the Holy Office has affirmed repeatedly, as can be seen in Ursay, vol. 1, disp. 1, p. 1, no. 38, that a profession, even if it appears to have been made with a cheerful and joyful spirit, if it was preceded by fear, and if the effects of that fear persist, and if moral coercion is present, is not to be considered valid. But the testimony of the Community concerned entirely external acts. WHAT HAPPENED AFTER THE PROFESSION. — It is not necessary to recount the depositions of the witnesses, who all agreed on what happened after Titus made his profession. Furthermore, the Consultant divided the entire period of time up to secularization into three stages. The first stage is that of repentance, aversion from the religious institute, and attempts to revoke the profession; the second stage includes mental perplexities and spiritual anguish caused by excessive and continuous scruples; the third stage, finally, contained a disorderly way of life and truly grave sins. But (the Consultant maintained) that immediate repentance, and the subsequent quantity of scruples, and the ultimate perpetration of sins, show that the profession preceding them was not entirely free and spontaneous. For the Spirit of the Lord does not pass through so quickly, as the Holy Office argues in decree no. 25 and following, before Arguell. With these things further clarified, the Consultant fully demonstrated that this profession could not have been validated over time by any subsequent confirmation.

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After these things, having briefly summarized everything that had been brought up and debated so far, the Consultant added that there is reason why faith should not be given to the sworn testimony of Titus, asserting that his profession was invalid, citing the authority of Pignatelli, Cons. A, no. 9, vol. 1, who says: "It does not prevent that in the matter of a profession, one should not be bound by the oath of the profession..." When there are other very powerful presumptions, aids, and considerations, which in no way favor the profession, many Authors, and those most serious, teach that one can be released from that oath; thus, Angles, Caietan, Navarrus, and Barth, among others, limit their doctrine. And he added that this sworn profession could not validly be opposed by the opinion of the witnesses, who considered Titus's profession to be valid.

[*Latin ed. p. 481*]

RESTIT. IN IN TE GR.. ET NULL. PROF. SEU DISP. 4 8 t: Furthermore, all the witnesses, with the exception of the Master, only knew Titian after his profession; and their testimony held no weight. On the contrary, the testimonies of the two brothers of Titian were to be considered, since, based on the account of the facts, one judged the invalidity, and the other at least doubted it. Especially, as Gard. De Luca, *De Reg.*, disp. 4, n. 2, and disp. 43, n. 13, observes, when there is doubt due to a lack of consensus, the conclusion must be that of nullity. All of this gained strength from the support of the Ordinary, who in his report wrote: "with the utmost care, and also most religiously," he had considered the points on which (Titian's) petition was based, by four theologians of our diocese, namely.... Who "were all distinguished by piety and learning, indeed, our private advisors, unanimously supported the nullity of Titian's vows." Furthermore, considering the preparation of the proceedings, the Consultant added some points regarding the dispensation; having examined the truth of the matter, he seemed convinced of the nullity of the profession. He added, among the reasons for granting the dispensation, that, according to the common teaching of Canonists, and according to the practice of the Holy Congregation, a doubt about the validity of the profession should be noted, especially if a great spiritual benefit would result for the petitioner. Indeed, a public reason is not necessarily required, but a serious private reason is sufficient, according to more recent practice, so that the good of the individual may benefit the common good, as stated by Coriol, *De sacram.*, disp. 33, dub. 1, n. 4; Pignatelli, *Cons.*, 148, n. 7; Ursaya, *Discept.*, 3, no. 49, vol. 2, page 1; and *Discept.*, 32, n. 58, vol. 6, page 1. Indeed, he maintained that Titian's religious profession should be considered either openly null, or at least doubtful; to which reason was added Titian's most serious spiritual need, in which matter four witnesses agreed, without contradiction from the others.

OBSERVATIONS OF THE DEFENDER OF THE RELIGIOUS PROFES-

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SION *EX OFFICIO*. — Leaving aside the rest, it will be sufficient to indicate some of the points that the Defender of the religious profession raised regarding the merits of the case (1). The Defender argued, in this case, that there was no reason whatsoever, nor any serious reason, that could render a religious profession null.

(1) Those who wish may see what was discussed in another case of this kind, page 29. *Acta, vol. 1, Jasc.*

[*Latin ed. p. 482*]

43S! RESTITUTION. IN INTEGRUM. AND NULL. PROF. OR DISP. He, however, maintained that there should be a reverential fear towards him, to such a degree that it could be said that he would fall into constant anger. But Titius was not subject to any force or fear. He asserted that all that was presented did not constitute coercion, whether physical or moral; rather, they were the highest persuasions and lawful incentives, which do not take away anything from freedom; especially since his brother had given Titius the opportunity to leave the novitiate and enter a college to pursue his studies. And almost all the witnesses, with only two exceptions, did not testify to this grave coercion. Furthermore, those who testified about the grave coercion were two brothers of Titius, and therefore, they were suspected. After these statements, the Defender denied that there was a place for dispensation, first because the religious profession was considered doubtful, and second because there was no public cause for dispensation, according to what is taught by Maschat, book 3, title 31, paragraph 29, near the end. After these and other arguments, the case was presented with the following doubts.

Doubts.

I. "Does it follow from the causes of restitution in integrum in this case?" "And to the extent that it is affirmative."

II. "Does it follow from the nullity of the profession in this case?" "And to the extent that it is negative."

III. "Should the Most Holy [Father] be consulted regarding the vow of chastity in this case?"

RESOLUTION.

The Holy Congregation of the Council, having heard the case on January 23, 1864, decided to respond as follows: To I and II, a decision will be made in III. To III. Considering the particular circumstances occurring in this case, affirmative.

PROCEEDING OF THE CAUSE.

The Defender of the religious profession, having received this unfavorable judgment, requested a new hearing, according to the Constitution: If

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granted, so that the case could be examined again, and with a new effort, the Defender of the profession would strive to exclude the doubt about the profession, so that the only thing that remained, as he contended, would be the cause for dispensation. Nevertheless, the S.C. [Sacra Congregatio] again reviewed the case on April 23, 1864, and, according to custom, proposed a new doubt: "Should the decisions in this case be upheld or overturned?" and responded: "In the decisions."

[*Latin ed. p. 483*]

"RESTII". IN INTEGRUM ET NULLUM. PROF. SEU DISP. 48. Ex his, colliguntur: I. Adolescentem Titium, cui phantasia praepollent, fuisse iugiter circumventum, ut in Religione profiteretur. II. Eiusdem priores, et efficaces conatus ad circumventionem superandam, in irritum cessisse, per oppositas suasiones, innixas religiosis et profanis motivis, iuvenili phantasiae energice repraesentatis a fratre, in quo unice fiduciam reponebat. III. Eamdem circumventionem auctam fuisse per factum, quo dictis suasionibus cedens, longe a suis, in alterum monasterium sub severiori magistro missus fuerit. IV. In hoc novo statu, eo fine inducto, ut actus professionis facilius obtineretur, neque suasiones, neque auctoritatis pondus defuisse, quod eo maiorem vim in animo Titii exercuisse dicendum est, quo minor reddita erat tali adolescenti resistendi facultas. V. Exitum professionis religiosae in tali statu emissae, quinam fuerit, tristes probavisse, inde consecutos eventus. VI. Haec autem adiuncta, aliis non exclusis, movisse Sacram Congregationem ad consulendum SSmum super dispensatione (1). (1) Sacra Congregatio non tulit iudicium super nullitate professionis, imo ex verbis in Resolutione adiectis - attentis peculiaribus circumstantiis in casu occurrentibus - non sine quadam difficultate, videtur sententiam pro dispensatione descendisse. Et sane, quamvis omnibus spectatis adiunctis, facile cuique appareat, Titio structam fuisse viam, quae ad actum professionis eumdem ducere natura sua debet, quam viam coacto suscepit, et sponte numquam est prosecutus; nihilominus acta processus deficiebant ad probandam saltem perseverantiam incoeptae coactionis in novo probationis tempore. Confessioni enim iudiciali Titii, videbatur obstare depositio Magistri, et nonnullae fratris expressiones, quamvis praesumptio favore Titii militaret ratione novi status in quo adactus reperiebatur.

[*Latin ed. p. 484*]

484 THEOLOGICAL. December 7, 1831. Session 5, chapter 1, concerning reforms. A concise summary of the case is presented. A certain Canon, a theologian named N., petitioned the Sacred Congregation of the Council, complaining that the Chapter denied him certain rights and subjected him to certain burdens. The Chapter maintained that the Canon, theologian N., who, in place of the sacred reading of Scripture, taught dogmatic theology,

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was obligated to attend the evening choir on those days when he gave scholastic lectures in the morning; furthermore, that he could not enjoy the uncertain emoluments derived from anniversaries and other fixed or occasional sacred functions, to which he had not been present to fulfill his duty, although other Canons, absent from their offices, such as the Parish Priest, Penitentiary, Treasurer, Custodian of the Archives, etc., did enjoy these same emoluments; and finally, that he should lose even the daily distributions on days of vacation, even if he did not attend the choir, since, by reason of his office, he should assist the examination of clerics on those days. Therefore, three questions were proposed, which are written out below at the end. The facts, however, showed that previously, in that Chapter, a Canon had customarily delivered sacred discourses; afterwards, by Apostolic Letters issued in the year 1832, the duty of teaching dogmatic theology was assigned to him, and provision was also made for a parochial canonry. In the documents concerning the emoluments that both the Canon, the Parish Priest, and the Theologian, could receive, it is stated: "while fulfilling the duties of their office, they should be considered present in the choir, and should participate in other functions often held in the Metropolitan Church, and should enjoy choral distributions and other uncertain emoluments." Furthermore, in a synodal law of the same Metropolitan Church, it was stipulated: "On the day that the theologian reads [Scripture], he shall receive distributions." Nevertheless, the Chapter, adhering to a certain Chapter decree of the year 1829, in which it was stipulated that the Canon theologian should receive emoluments from anniversaries and other functions only if present; and also adhering to a custom that seemed to follow from this, considered that the Canon N. was not legally entitled to receive these emoluments.

[*Latin ed. p. 485*]

THEOLOGICAL. 485 The Archbishop, in his report, presented weighty reasons and believed that three proposed questions should be resolved favorably by the Orator. A concise discussion. WHAT SHOULD BE OBSERVED REGARDING THE FIRST QUESTION. — At the beginning, it was observed that, according to its office, a Canon Theologian fulfills his office whether he gives biblical sermons or teaches dogmatic theology, as taught by Benedict XIV concerning diocesan synods, Z. 13, e. 9, n. 17. And since the Canon N. has been assigned the task of instructing the clergy in dogmatic theology, it seemed to follow that all privileges should pertain to him that are established for the sake of this office. Indeed, a Canon Theologian, through constant practice of the Sacred Congregation of the Council, benefits and receives daily distributions not only during the time and hour in which he reads, but throughout the entire day, even if he does not serve in the choir; because, as Cardinal Petrucci observes, it would truly be "frivolous" if the privilege were to be such that reading "should

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not take place during the hours of the divine office," and furthermore, it would be "impracticable" if "both burdens were imposed." *Comm. ad Const. IL Innoc. VI. n. 53, tom. 4.* Furthermore, Petrucci states that this opinion is that of all Doctors, and that it has often been decided by the Sacred Congregation, especially in Tropies, May 9, 1597, lib. 9, Decret., page 13, in which "the Sacred Congregation, with the authority granted to it, granted an indulgence, so that on the day in which a theologian reads the Scriptures from the exercise of his office, he may receive the daily distributions, even though he does not participate in the divine office." Nor did the Sacred Congregation judge otherwise in Milan, April 29, 1593, "there," "to the theologian, the complete daily distributions of all hours are to be given, even if he does not serve in the choir." *Lib. Decr. 7, page 106.* Nor did the Sacred Congregation judge otherwise in more recent times, as in Cori, August 26, 1848, through summary petitions, in which a rescript was issued: "To the Canon Theologian, the complete daily distributions are to be given for the days in which he reads, as if he were permanently present in the choir." Similarly, in Bischien, September 26, 1857, concerning the third question: "Whether (the Canon Theologian) on the days in which he lectures and teaches, is exempt from the choir for the entire day in order to receive the daily distributions; the answer was:"

[*Latin ed. p. 486*]

486 THEOLOGICAL. Affirmative. The same matter was considered in Perugia, in the Theological Congregation, on July 30, 1859, concerning the following question: "Whether a theologian is excused [from attending] even if, on the day of the scriptural reading, he does not devote himself to the study of the sacred text, but merely reads the prescribed passage at the appointed hour." The Congregation responded: Affirmative. For this privilege was said to have been granted to theological doctors, so that they might more diligently perform their most excellent office, either because the theological office requires preparation and study, which is not compatible with the service of the choir, and in its place, as Cardinal Petra observes in the aforementioned passage, number 53.

WHAT SHOULD BE OBSERVED REGARDING THE SECOND QUESTION. — Although, according to what has been presented, a theological doctor present with the choir is excused on the days when he reads, nevertheless, the Council of Trent does not mention this presence. Therefore, immediately after the celebration of the Council of Trent, no other privilege seemed to be able to be claimed by a theological doctor, except that which is granted in Chapter "Quia nonnullis." Concerning Masters. Namely, the privilege of enjoying the fruits of his office during the time of his absence, but not of receiving the daily distributions, as the Holy Congregation of Rites decided in the immediate years following the celebration of the Council; as Cardinal Alciatus reports in his manuscript concerning chapter 1,

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session 5, on Reform, and as Cardinal Petra observes in the aforementioned passage, number 53. However, although, by law, the daily distributions were not due, nevertheless, the Holy Congregation of Rites considered it necessary to act with discretion in this matter with His Holiness, Pope Gregory XIII, who, out of consideration, granted such daily distributions to theological doctors, without prejudice to the text in Chapter "Quia nonnullis." For this chapter does not concern the reader who reads in the church by reason of his office, as does the theological doctor. Therefore, from that time onward, the opinion of the Holy Congregation has been to consider the theological doctor as present in the choir, so that his presence does not interfere with his office, and therefore, he may also receive, in addition to the fruits and daily distributions, the emoluments that are usually given to those who are present. Thus, in Avignon, in October 1586, in Lib. 4 Decret, page 189, it is stated: "The theological doctor who receives a stipend does not receive the distributions that are given for anniversaries, unless the anniversaries fall on the days of the reading, in which the reader is considered to be present." However, it was noted that the receipt of these emoluments may be subject to a limitation by the will of the testators, or...

[*Latin ed. p. 487*]

THEOLOGICAL. 487 Concerning Benefices: The Holy Congregation decided that the following limitations should be observed, when dealing with Canonicals granted an Indult of Jubilation, or those absent due to illness, and also concerning Canonicals exercising the care of souls, who are absent from the choir by reason of their office, as is evident from the Ascolan Letters Apostolic, November 20, 1830, and concerning the doubt IV: "Whether Canonicals who are absent from choral service can receive distributions and emoluments for the exercise of the care of souls in this case?" The response was: affirmatively, regarding all distributions and emoluments, except those which are due only to those actually present, by the will of the Testators. Furthermore, it was decided concerning a Canonical appointed to hear confessions, and granted privileges similar to a Canonical penitentiary, in the Roman Distribution of November 27, 1858, regarding the doubt (1). REGARDING THE THIRD DOUBT. The Archbishop, among other things, observed in his report that it pertains to the office of a Canonical theologian to assist in the examination of clerics, and to perform other duties connected with the office of teaching; and therefore, it should be considered that he is actively engaged in his office when he is assigned to these duties related to teaching. Furthermore, it was added that such privileges were not granted for the sake of the theologian himself, but rather for the benefit of the office, or for the public good, to which the diligence of the theologian contributes, if he fulfills his office more fruitfully; and that, therefore, no custom should be considered valuable which would be contrary to this good. This was also declared in the Perugian Theological

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document of July 30, 1859. Furthermore, the Holy Congregation, in the Bisarchiepiscopal Prebendal Theological document of September 16, 1857, and especially in the aforementioned Roman Distribution, concerning the Penitentiary, of November 27, 1857, regarding the II. doubt, gave precedence to deliberations or decrees of the chapter regarding such privileges. However, since it was discovered from the documents presented in this case that there were no chapter constitutions in that Metropolitan Chapter, a deadline should be set for their completion, and they should be presented to the Archbishop for approval, as is fitting. (See also what we noted on page 289).

[*Latin ed. p. 488*]

488 THEOLOGICAL. Concerning this, a recent example was reported from Viterbo, where certain Canonries and Benefices were suppressed and suspended on July 27, 1861 (1). Doubts: I. "Is a Canon, who is a theologian, obligated to attend the evening choir on those days in which he teaches in the morning?" II. "On the aforementioned days, besides the daily distributions, are emoluments also due to him, in this case?" III. "Is he who is excused from the choir also to be considered to be entitled to the aforementioned distributions and emoluments on those days in which he is permitted not to teach, yet, by reason of his office, he assists in the examination of Clerics, in this case?" RESOLUTION. The Sacred Congregation, having knowledge of the matter, decided on December 7, 1861, to respond as follows: To I: Negatively. To II: Affirmatively, except for those emoluments which are due only by the will of Testators or Donors, and only in their actual presence. To III: Affirmatively, as in II, and with the understanding that the Archbishop should prescribe a suitable term for the completion of the statutes, to be approved by him. From this, it follows: I. A Canon who is a theologian should not be confused with any Canon who undertakes the office of teaching, which is not annexed to the Canonry. II. Indeed, the principal office of a theological prebend is the proper teaching, which has no place whatsoever in other Canons, in regard to the granting of prebends. III. Therefore, a Canon who is a theologian, when absent from his office, should be considered as present at the choir, and as fulfilling his choral duty. IV. Therefore, he has the right, and should possess it, not only to receive the fruits of the prebend, but also to the daily and extraordinary distributions, unless the will of the Testators or Donors resists the receiving of these latter, which, as the supreme law, must be observed. (1) See also page 106 in the notes.

[*Latin ed. p. 489*]

48. IV. FROM CONVERSATIONS, CONCERNING DILIGENCE, OF THE CONGREGATION OF SAINT BENEDICT IN FRANCE. August 2, 1862, and August 29, 1864. John Baptist, a monk of Saint Benedict

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in France, proposed the following questions to the Holy Congregation for clarification: 1. "Whether the Decree of August 9, 1852, concerning the translation of feasts (1), should be understood to apply to all feasts throughout the year? (1) 'DECREE: Since it has been inquired of us whether the power of granting and transferring indulgences, which has been granted to the Church for the benefit of the faithful, has been conceded in such a way that, in the translation of feasts, the indulgences attached to them are also transferred, and whether a negative response would be more appropriate, or whether, in certain cases, recourse should be had to this Holy Congregation; it seems entirely fitting that all diligence should be employed to ensure that provision has been made for the granting of indulgences, so that the faithful may more easily avail themselves of them, and that, in general, the course of events and the circumstances of places and churches, and even the actual times of this age, may be such that, especially in this present time, with the general concession of the translation of feasts granted by the Apostolic See, the translations of feasts may occur; and since, through such translations, made for just reasons and with due consideration, the devotion of the faithful may be aroused to praise the Lord in His saints, and to foster the piety of the faithful and the salvation of souls, it is most important that the indulgences attached to these feasts should also be transferred.' The Holy Council of Trent (Session 26, Decree on Indulgences) has indeed decreed that it is most salutary for the people. However, the most esteemed Fathers of this Holy Congregation have unanimously judged that it is advisable to request from the Congregation of Rites, and from this Holy Congregation, concerning the translation of feasts, the granting of indulgences and the transfer of sacred relics. Therefore, Our Most Holy Lord, Pope Pius IX, having heard, through the undersigned Substitute of the aforementioned Holy Congregation, a report on these matters in an audience on August 9, 1852, benevolently ordered that all indulgences, whether those granted to certain churches or oratories, or those that have been or will be granted to others, should be transferred, if it seems opportune, to the churches and oratories to which the feasts are transferred, or with the consent of the Ordinary."

[*Latin ed. p. 490*]

490 CONGREGATION OF SAINT BENEDICT IN FRANCE. Regarding the proper transfer of feasts and their solemnities. The following words from the aforementioned Decree raise a doubt: "Certain circumstances prevent some from believing that this applies only to feasts transferred to a Sunday, due to ecclesiastical agreements made by the Holy See with foreign nations, as the aforementioned Decree states." II. "Does anyone who receives an Indulgence attached to a feast gain it if, on that very day, according to the Roman Breviary, or according to the calendar of a particular

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diocese, or of an Order, etc., he participates in the Divine Office?" Furthermore, does a member of any sodality acquire Indulgences on the day the feast is celebrated by the Order to which the sodality belongs, even if that day is different from the Roman or diocesan calendar?

RESPONSE. The Sacred Congregation, having considered the opinions of the Consultors and deliberated on the matter on August 11, 1862, responded as follows: Regarding I. The aforementioned Decree should be understood to apply to all feasts that are properly transferred, as stated in the same Decree. However, the Sacred Congregation, in order to resolve the second doubt, ordered one of the Consultors to write a further opinion, which we append here. The Consultor's opinion, summarized: To better understand the doubt, the Consultor presented a practical example: If, according to the Roman calendar, certain days granted in Sacred Supplications, or in Novenas, or Septenaries, or Triduums of prayer before or after a feast or during its Octave, are transferred, they should be understood to refer to the day on which such feasts or their solemnities are publicly celebrated in certain places, or churches, or public oratories, either permanently, or on a particular occasion, or for a limited time, and during that time, they are legitimately transferred. However, if only the Divine Office is transferred, but not the solemnity and external celebration of the feast, then no transfer of Indulgences is to be made. "This concession, granted by the Apostolic benevolence, which shall be valid for all, without exception, and for all future times, without any further process, the Holy See wished to be published through this Decree of the Sacred Congregation, provided that all other conditions prescribed in the particular or general grants of the aforementioned Indulgences for those who wish to obtain them are scrupulously observed." "Given in Rome, from the aforementioned Secretariat of the Sacred Congregation for Indulgences, on August 9, 1852." F. Card. ASQUINIUS, Prefect. Aloysius Archip. Prinzivalli, Substitute.

[*Latin ed. p. 491*]

CONGREGATIONIS S. BENEDICTI IN GALLI » . 491: The feast of the Most Holy Name of Jesus is celebrated on the second Sunday after Epiphany. In the Order of St. Francis, it falls on January 14th. However, if it were to be celebrated in a particular diocese, for example, on the third Sunday after Epiphany, the question arises: When is the indulgence granted to the faithful? Is it on the second of January, according to the Roman calendar, or on the third Sunday, according to the diocesan calendar? And when do the Brothers of St. Francis, and the sodalities associated with them, gain the indulgence? Do they gain it on the second Sunday after Epiphany, or perhaps on the third Sunday, or rather, on January 14th? Having determined the question with this example, the Consultor opined that, assuming a legitimate concession or the translation of the feast, the indulgence is acquired according to the aforementioned

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decree, when the external celebration of the feast takes place. Therefore, in the example given, the indulgence would be gained in the diocese on the third Sunday after Epiphany, while in the Order of St. Francis, it would be on January 14th. Regarding sodalities that belong to a Regular Order, it was observed that if they are part of the Regular Order to the extent that they participate in the privileges and indulgences of the Order, they will gain the indulgence on the same day that the Order itself gains it. However, since the members of the sodality are not so bound to the religious order as to be entirely dependent on its superiors, but are rather diocesan subjects under the episcopal jurisdiction, they may gain the indulgence on either day; that is, either on the feast day assigned in the diocesan calendar, or on the day established in the calendar of the Regular Order.

RESOLUTION. After reviewing the matter again on August 29, 1864, the Holy Congregation decided to respond to the question posed in the second place: The indulgence is acquired by the Christian faithful on the fixed and duly established day in their diocese; by Regular Orders on the day duly established in their calendar; and by those who have given their name to a sodality associated with a Regular Order, the indulgence is acquired on the day duly established in the diocesan calendar or in the calendar of the Order, if they enjoy such a privilege, but not on both days.

From the COLLECTIONS: 1. Legitimate translations of any feast day are to be considered as having transferred the indulgences granted in view of those same feasts.

[*Latin ed. p. 492*]

492 CONGREGATION OF SAINT BENEDICT IN FRANCE. II. However, for this purpose, namely, the transfer of indulgences, it is not to be considered that the celebration has been transferred simply by the office with the Mass; the transfer is not merely a formality. III. Therefore, the following indulgences pertain only to the external solemnities of the cult, with which the faithful people are accustomed to rejoice. IV. For the benefit of the faithful, if, by the permission of the Ordinary, the celebration of a feast day is transferred to a more convenient day, along with its novena and any other public prayers that are to be held, the benefit of the indulgences is also to be considered as transferred on that day (1). V. Those who, for various reasons, are members of different communities with a distinct calendar, may gain indulgences on one of several repeated feast days. FROM THE SACRED CONGREGATION OF RITES. RESOLUTION OF DOUBTS. On July 28, 1821. Among other things, a doubt was proposed in this Decree, the resolution of which, since it is useful to be known and put into practice, we suggest that we recall, although it is found inserted in the collection of Cardinal [insert name if known], which we do willingly. Thus, it was proposed: (i) To make the matter clearer by example: For example, an indulgence has been granted to a Sodality, of which we spoke on page 321,

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on the feast of Saint Aloysius Gonzaga. But suppose that on that day (if it is a weekday), the members of the Sodality cannot celebrate this feast, and conveniently fulfill the prescribed works for gaining the indulgence. With the permission of the Ordinary, a Sunday within the octave can be assigned, so that the members of the Sodality may celebrate the external solemnities of the feast of Saint Aloysius, and on that day, the members of the Sodality will gain the indulgence. These points are taken from the words of the Decree of August 9, 1852.

[*Latin ed. p. 493*]

498 RESOLUTION OF DOUBTS. Doubt. "Whether the practice of celebrating a Low Mass on the Feast of the Lord's Supper on Thursday by the Parish Priest, which can be done on that day and the following day, along with other prescribed ecclesiastical functions, due to a lack of clergy, is a valid custom in certain parishes, especially rural ones; or rather, whether it should be abolished."

RESOLUTION. After careful consideration, and after hearing the opinion of the Consultor, the Holy Congregation decided to respond: Affirmative, with the understanding that: the Ordinary of the place should strive to ensure that, in parishes where there are three or four clergy at least, the sacred functions are performed on Thursday and Friday, and on Saturday of Holy Week, according to the form of the small Ritual, promulgated by the order of Pope Benedict XIII in the year 1725; and that, in other parishes which lack clergy, for the benefit of the people, the Parish Priest may, with the annual permission granted, celebrate the Low Mass on the Feast of the Lord's Supper on Thursday, before the Conventual Mass begins in the cathedral or parish church.

And to the Most Reverend Secretary, with the other members, this Resolution was approved and confirmed by Pope Pius VII, on June 31, 1821, who also ordered that it be published in print. For a further explanation of the matter, we add the opinion of the Consultor.

The Consultor's opinion, summarized. The writers on liturgical matters agree that this Thursday is not to be considered among the days that are entirely devoid of liturgical celebration, such as the sixth day and the holy Saturdays, according to Canon 3 of the Decree "De Consecr." Indeed, because of the sublime (1) The Holy Congregation did not wish to leave the matter entirely to the discretion of the rural Parish Priests, since, as Gardellinius himself points out in his collection, there may sometimes be reasonable grounds for denying such permission. This would be the case, for example, if the rural Parish Priests were required to come to the cathedral to complete the number of priests, deacons, and subdeacons needed for the preparation of the sacred oils, and if no one could perform that duty due to the distance or for some other reason. While the Holy Congregation was concerned with the needs of the poorer and rural parishes, it also

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wished to encourage the Bishops to provide assistance so that the sacred functions could be performed on Thursday and Friday, and on Saturday of Holy Week, in other parishes where at least three or four clergy are available, according to the form of the small Ritual, promulgated by the order of Pope Benedict XIII.

[*Latin ed. p. 494*]

494. RESOLUTION OF DOUBTS. Since the mysteries which are commemorated on this day require the sacrifice [of the Mass] by law, formerly three Masses were celebrated: the first for reconciling the penitent; the second for the sacred oils; and the third finally, for commemorating the institution of the Holy Eucharist. The present discipline, however, admits of only one solemn Mass in cathedrals, collegiate churches, parish churches, and monasteries; private Masses are altogether forbidden. If, on this day, a feast of precept should occur, it is not permitted to all priests to celebrate, but a certain number of Masses are allowed in each church, so that the faithful may fulfill their obligation; nor are the rest of the clergy lacking, who, among the solemnities of the Masses, may receive the Holy Eucharist, imitating the Apostles. If the reason is asked why private Masses are forbidden on this day, the answer is not to be sought in the quality of the day itself, which indeed admits of the sacrifice, but in the reverence due to the most sublime mystery of the institution of the Sacrament. It is fitting that priests should abstain from celebrating the sacrifice, and that the laity, as well as bishops, superiors, and pastors, should receive the sacred bread from the hands of the celebrant. For it is remembered that the Lord, "giving His true body and blood to the Apostles under the species of bread and wine," "as the Divine Savior first gave the most holy mysteries to Himself, and then to the Apostles," so it was fitting that the priest, on the greater week of Feria, having received the Divine Eucharist, should afterwards distribute it to the entire clergy, who are attached to the church where the sacred rite is performed," as Benedict XIV says in *Institutiones*, 38, n. 5. Furthermore, the Consultor added that it is not only fitting that priests, and the rest of the clergy, on this day, should receive the sacred Host from the hands of the celebrant, but also that the faithful should do the same, indeed that they have the right to have the Sacrament administered to them by the pastor, to whose jurisdiction they are subject. For, according to the ancient custom of the Church, all the faithful were led, not only by piety, but also by precept, to do this, as is proven from Canon 1 in *In Coena*, on Consecration, dist. 2. (1) Here is the Canon which is attributed to Soter, Pope, found in the aforementioned place: "In the Lord's Supper, the reception of the Eucharist is neglected by some; but since, on that very day, it is to be received by all the faithful (except those to whom it is forbidden for serious reasons),

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ecclesiastical usage demonstrates that..."

[*Latin ed. p. 495*]

RESOLUTION OF DOUBTS. 4-95. Since it is fitting that a sacred and solemn celebration should take place in all churches that have a subject congregation, and since not all clergy possess equal resources and wealth, so that they may be able to perform the sacred actions with due dignity, both on this Feast Day (Feria V), and on the Feast of the Transfiguration (Feria VI), and on the Holy Sabbath, Pope Benedict XIII, considering this inconvenience, provided for the poor and rural parishes through a small Ritual. On this matter, one may consult Father Meratus, *ad Gaudentum*, part 4, title 7, number 31, concerning the rites to be observed in smaller churches. However, the Consultor continued, if the parishes are poorer, as is often the case in rural areas, where there may be only one, or even no, clergyman who can minister at the celebration wearing an alb, it is fitting that these functions be omitted; nevertheless, it seems most appropriate, in order to satisfy the piety of the subject congregation, especially if some wish (and have the right) to receive the Holy Communion and fulfill the Paschal precept, that the parish priest celebrate Mass privately. It appears that Pope Benedict XIV held this view when governing the church of Bologna, writing: "If, besides the parish priest in his parish, any priest, whatever his condition or dignity, has dared to celebrate Mass privately on the fifth, sixth, and Sabbath days of the greater week, we shall severely punish him, and even interdict him from the divine offices, etc." And indeed, when the Holy Congregation was asked: "Can the Holy Eucharist be celebrated on the fifth day of the week in a church (not in a private oratory, but in a public church), one private Mass for the sick, apart from the solemn celebration?" the response, dated March 27, 1773, was: "at the discretion of the Bishop." Furthermore, there are churches in which, for the convenience of the people, the parish priest celebrates privately and administers the Holy Communion to the congregation subject to him, before the commencement of the customary Mass. Thus, in the patriarchal Lateran Palace, and in some other collegiate churches of the city, although all the solemnities are held there, the people can conveniently attend the sacred services. If this is the case, it seemed to the Consultor to be more fitting that this should be done in a rural area "so that those who are already penitent may, on the same day, receive the sacraments of the Body and Blood of the Lord and be reconciled." This reasoning, considering the ancient penitential discipline, is worthy of consideration.

[*Latin ed. p. 496*]

49. ON DOUBTS CONCERNING ABSOLUTION. In a parish, for the benefit of those subject to it, so that they may hear Mass celebrated by their own pastor, and receive the sacraments in the same place, fulfilling the Paschal

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precept and recalling the memory of the institution of the Sacrament. This is most fitting for the benefit of the people; it seems even more fitting with regard to the pastor himself: for while he is bound to administer this most sacred sacrament to others, he himself would be compelled to abstain (if another priest were absent) and would be deprived of the spiritual joy of that day. From the COLLECTIONS: I. The reason why private Masses are forbidden to priests on Holy Thursday is to recall the memory of the institution of the Sacrifice, which requires that it be commemorated in a special way on this day. II. This memory is best recalled through public and solemn functions, celebrated according to the prescribed rites of the Church, in which the priest, representing Christ the Lord in the Holy Supper, himself receives the sacrament of His body and blood, and distributes it to the rest of the clergy, as if to the Apostles. III. These solemnities should also be celebrated in poorer parochial churches, if they can at least be carried out decently according to the form of the small Ritual of Benedict XIII, which has been written to this end. IV. If, due to a lack of clergy in a rural parish, the prescribed form cannot be observed, the pastor may be permitted, with the annual permission of the Ordinary, to celebrate a sung Mass for the benefit of the people, so that this does not become a detriment to the order. V. It is fitting that he who has the people assigned to him should celebrate the sacrifice on this day, so that the faithful, whether from the people or from the clergy, may receive the sacred synaxis from his hands in the sacrifice. VI. Indeed, for the same reason, the custom is not to be reprehended, by which the pastor, in the same church where the solemn functions are performed, celebrates Mass for the benefit of the people before the solemnities.

[*Latin ed. p. 497*]

497 APPENDIX XVI. CONCERNING the judgment on the doubt regarding the Regular Bishop, the moral theology of Blessed Alphonsus Liguori, which is considered by some to be excessively lenient and dangerous, and which, contrary to the Sacred Penitentiary, requires urgent consideration, and which the illustrious, venerable, and holy Liguori himself deemed conducive to salvation and sound moral theology, has proposed the following doubts to be resolved:

I. "Whether the judgment of the Holy See concerning the opinions of the aforementioned Blessed Alphonsus Liguori, which he professes in his works on moral theology, can be safely followed and affirmed as true, as some are wont to urge."

II. "Whether a confessor ought to be concerned who follows all the opinions of Blessed Alphonsus Liguori in practice, solely for this reason, that the works of the aforementioned Bishop have been praised by a double judgment of the Holy See, the first of which was issued by the Most Holy Congregation of Rites on May 14, 1802, after a theological examination, and it was declared that nothing worthy of censure was found in those

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works. The second judgment was issued by the Sacred Penitentiary on July 5, 1831, which it is expedient to recall, 'Most Reverend Father, Louis Francis Augustus Cardinal de Rohan-Chabot, Archbishop of Rouen.' The judgment of the Holy See concerning the works of Bishop Alphonsus Liguori is this: 'The Bishop can rightly judge that the doctrine is sound, safe, and in no way contrary to the Gospel.' *Acta*, vol. I, p. 32."

III. "A confessor, concerning whom there is a doubt, who does not read the works of the Blessed Doctor except to accurately know his doctrine and to proceed to a judgment, but does not consider the reasons by which various opinions are supported: but he believes that he acts safely in this very matter, because the doctrine which he follows does not contain anything worthy of censure, but is commonly received, and that he can rightly judge that it is safe, and in no way contrary to the Gospel."

[*Latin ed. p. 498*]

498 APPENDIX Regarding I. Those who are to be reproached are agitated by others. Indeed, in ecclesiastical matters, those who, concerning opinions and questions which are presented to public authorities, even though they are approved, are subjected to trials, it would suffice to cite the authority of St. Alphonsus. Regarding the sixteenth chapter, some are affirmative, others negative, concerning the writings of the Servants of the Holy See. Therefore, any question resolved would be declared to be approved, to the extent that it is alien to the authority of God, which each one understands concerning canonization. Therefore, to this repeated judgment of the Holy See, some seem to attribute much more than the judgment itself can bear. The measure of judgment must be taken from the nature of the end for which the judgment itself is given. They seem to believe that the Holy See judges all the opinions of the praised angelic men to be true; or even that, according to the judgment of the Holy See, it is permissible to accommodate oneself to the opinions of St. Alphonsus, even if one knows, either from one's own knowledge or from competent authority, that the opinion followed is evidently false. As to the investigations and examinations conducted at Trautenau, it appears that such allegations, arising from the judgment of the Holy See, can be refuted by the following observations. Both the judgment of the Holy See, at that time, concerned not the absolute truth of the doctrine, but rather the doctrine concerning something else. One thing is the doctrine itself; but the investigation is instituted to determine whether the Author has written anything that is contrary to the true faith and to good morals; and therefore, to ascertain and declare the truth, as it is clear from the general decrees of Urban VIII. In these, the following law is prescribed: "Furthermore, it must also be diligently investigated whether the one for whose canonization one is urged, has written any books, treatises, pamphlets, meditations, or something similar." As if, by writing such things, innumerable questions, which are constantly debated

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among moralists and jurists, would be irrevocably settled.

[*Latin ed. p. 499*]

499: xvi. "It is established that, before any books are submitted for examination, certain positions must be considered, which appear worthy of attention; namely, whether they are heretical, or close to error, or whether they contain subtle heresy, or error, or something contrary to the doctrine of the Church, and whether they concern good morals, or are suspected of error, or are rash, or present a scandal, or offend the ears of the faithful, or are of a foreign nature, or whether they are seductive to the simple, or schismatic, or injurious, or impious, or contain blasphemies, etc. Judgment is then rendered by the Holy Congregation regarding these matters, taking into account the acts of the examination, with due regard to the Decree of Urban VIII, as mentioned above; namely, whether anything in the writings is worthy of theological censure, or whether it contains something that can be disputed, so that the head of the process of canonization may be informed. These matters are further confirmed by what is written by Benedict XIV in his work *De Servis Dei Beati*, I, 2, chapter 28, § 2 and following. There, describing the duties of the examiners of the servants of God, the aforementioned praised Pontiff writes: "The purpose, therefore, or the goal of this judgment is to determine whether the doctrine of the servant of God, as he has set it forth in his writings, is free from any theological censure; so that, if anything is noted by the examiners beyond the doctrine itself, it should be said, speaking strictly, that this is not pertinent to the matter under consideration, but rather to the opinions of the examiners themselves, and that they should acknowledge this, when using such terms in this work. And in § 5, 'The Decrees of Urban,' although they do not enumerate all the censures, yet, with the authorities cited in that place, they readily approve the probability of a doctrine, and... it is the duty of each examiner to carefully consider each sentence, each proposition, which, if it does not agree with sound doctrine, would be considered censurable by the Doctors. Furthermore, the Pontiff explains that, concerning a new doctrine, of which mention is made in the Decree of Urban VIII, he says: 'Whether it is worthy of theological censure.'"

[*Latin ed. p. 500*]

500 APPENDIX XVI. "Et illa nova, sive quae sunt vana et inutilia, sive quae contraria sunt Scripturis divinis, et quae merito censurae dignae sunt, nihil adiuvare possunt Apostolicae Sanctae Sedis, quae, ad versantia proferens, ad Patres Sanctos pertinens, nihil in operibus illius censurae habet..." "Responsum est: 'aut illa erit, quae studio novitatis, negative, vel ut novam tradat doctrinam, circa Ecclesiae regulas adversantem, novorum vas adhibet voces.' Quibus verbis aperte indicavit habita ratione approbationem Dei ad mentis S. scriptorum effectum Sedis. Canonizatio."

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Haec autem multum conferunt, ut Sacra Poenitentiaria prudenter se gerat ad intelligendum quo sensu accipiendum sit illud iudicium S. Sedis, quod praxi S. Alphonsi opiniones, ob s o- emittere solet post operum examen, alicuius Servi Dei, ut procedi pos- ca nihil in operibus illius censura sit ad dignum repertum fuerit, ita tamen ulteriora". Hoc enim iudicium nullimode respicit sententias, ut haec quae probabili- intelligantur non absolute, sed de ea censura, quae, si adesset, obstitis- tantur.

Canonizationi eiusdem. aliqua gaudeant verba: nihil censura dignum; Quod autem ex hoc S. Sedis i u- dicio inferri potest, (quod est qui- dem maxime momenti) illud est nem- pē, unumquemque catholicum, qui ali- qua quaestione, vel ex scientiae m o- ralis profecto aliqua sententia suam posse prudenter accomodare potest doctrinae S. Alphonsi, sibi videlicet doctriuam h u- jus docti, ac sancti Episcopi adscri- bens, tes iudicio Eccle- siae inter Coelites non minus scientia, quam morali publice adnumerari meritus est, cui prudentia praestitit: ita tamen ut proinde cum doctrina non dicendi non sint imprudenter agere, defuit qui sanctitate praefulgens, heroica prudentia, et subiectio legi qui alias sententias sequantur, (servata semper praedicta exceptione) Neque alius videtur esse sensusalterius iu- dicii quod tulit S. Poeniten- taria ad secundum quaesitum. Cum enim in eo quaereretur: « an sit in● quietandus Confessarius qui omnes S. consona est responsio Poenitentiariae priori quaesito data. Cum enim quaereretur: « u- » B. Alphonsi a Ligorio sequitur o- » piniones in praxi S. Poententiae » opiniones quas in sua » tribunalis, hac sola ratione, ouod » morali profitetur B. Alphonsus a theologia

[*Latin ed. p. 501*]

xvi. "Quod Ligorius tuta via sequi et professari potest, quae paulo ante indicavimus, est: affirmative, quaeque in defectu scientiae subrogantur; scilicet, quivis prudenter quaerit, responsum tamen qui ctoribus inde opiniones traditas est: reprehendendi ab aliis probatis sequuntur. Ex qua auctor, ideoque tuto agit, si propriam sibi responsionem qua declaratum est, S. Alphonsus esse unum ex probatis auctoribus cuius opiniones qui sequitur sanctitate praefulgeat, docuit. Cum tuto agit, non recte aliquis inferret, per tuto in dubio subrogetur defectui scientiae, ecce, fuisse optionem pati dicendum particulam expressam, declaratas omnes laudati Antistitis veras sententias et opiniones; quod dignoscitur ex Auctoris, quem sequimur, sententiam, falsam esse, nullaque probabilitate gaudere. Haec omnia dicta intelligantur, ut sequantur opiniones ab aliis probatis auctoribus traditas. Nemo enim ignorat non quidem ad detrahendum (quod ipsos probatos auctores, usuque receptos, diversas et contrarias interdum tradere opiniones, quas utpote probabilitate gaudentes, nemo, enim qui eas sequitur, reprehensionem est dignus) Ecclesia auctoritati tanti viri, per haec quae diximus, cui, nihil detrahimus; sed ut iusto

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pretio habeatur S. Sedis iudicium: quidquid ultra veritatem protenditur reprehensionem est dignus. Pariter ex error est, qui quantum fieripos, eadem particula tuto, non bene quis sit, declinare debet. Hic insuper nolumus praetermittere, id quod animadvertit alter ex Consultoribus Rmus P. Hieronymus: "certus sum, illa anima S. Alphonsi prae oculis habuisset Constitutionem B beati Gregorii XIII: Custodes, nunquam tim circa eos Regulares, Regula obligat sub gravi."

[*Latin ed. p. 502*]

502 APPENDIX XVII. RULES OF PRACTICE CONCERNING THE PROPER PROCEDURE IN MATTERS OF CHURCH CONTRACTS.

In order to proceed to the matter, and for the sake of clarity, after having considered the subject matter extensively, and having noted a few defects and shortcomings in the current practice concerning contracts, which are the subject of this discussion, we have consulted the most celebrated Extra of Paul II, beginning with the first chapter. We have also consulted the decrees of Benedict XIV, and the general decrees of the Holy See, which, through long experience, establish and confirm these matters. We have already given, on page 251 and following, the proper and true obligation that is contained in the Motu Proprio of Benedict XV, dated November 22, 1742, and also the part of the general decrees of the Holy See, which were published by the Sacred Congregation and the Royal Council, and which must be observed in contracts concerning ecclesiastical matters, as well as in the administration of ecclesiastical affairs, and also in the dealings of the Sacred Congregations and the Tribunals.

Furthermore, as the Cardinal de Luca says, the Holy See, when it issues such pronouncements, derives its authority from the laws, and the learned Advocate Aloysius Trombetta, has recently published a new and excellent work on this subject, especially since nothing is written by a secretary of the same Sacred Congregation, which is done with the knowledge and special order of the Supreme Pontiff. Hence, this work has great weight, and it is because both the Sacred Congregation and the Sacred Rota have considered it useful to offer a summary of these decrees to the most humane readers, and we promise that it will be of great benefit.

In the first chapter, the Author presents the following. In the second chapter, he discusses in detail all those things which he asserts in this chapter, and also in those that follow, and which we consider to be of the utmost importance. He is accustomed to support and confirm these things with ample arguments. In this regard, he generally uses the same method, by first laying down the principles of civil and canon law, and then, from these principles, he derives the rules of discipline, or of practice, which are observed and must be observed by the Sacred Congregation and the Royal Council in matters concerning ecclesiastical contracts: and he further provides these with a kind of support and confirmation, drawn from the

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declarations which the Sacred Order has issued in particular cases.

[*Latin ed. p. 503*]

xvii. 503. By means of public edicts, he speaks of customs and matters which are of greater importance to the Church and which ought to be observed; he advises that these should not be omitted before any ecclesiastical matter is put up for auction: the Author, in the third chapter, without authority, speaks of offerings, about which more will be said concerning the necessary use of the Sacred Order; and he teaches that, if this is not done, the Holy Congregation warns that it is proper to investigate the matter, so that two or more offerings may not be found to be equal; this point is prescribed, so that new orders may be estimated with prudence, and that all offerings should be submitted to the Holy Congregation, so that it may choose which offering is better, considering the quantity, and which is greater in value, and which is more advantageous to the Church; for these matters do not appear to be of great importance, but the offerer must also be considered. Without special permission from the Apostolic See, the conditions of edicts concerning ecclesiastical matters cannot be set aside.

Subsequently, he enumerates the conditions which are required in order that offerings may have their intended effect; therefore, they must first be legitimate, that is, made in the proper place and time, according to the "edicta praestituta": this is to be understood in such a way that it is permissible to propose new edicts, if it is deemed useful for the Church, and as long as the matter is still in its entirety, and has not yet been properly committed to execution, and is recorded in a public instrument, within a period of three years.

Secondly, they must be certain, that is, a certain and explicit sum, from which, however, the Ordinary, with prudent judgment, may add to the proper offering, for the benefit of twenty or thirty days, or even more, as he sees fit.

It sometimes happens that someone testifies that he has increased the offerings; this increase should not be added to the proper offering, nor to that of another, for example, if Titus offers a certain sum, he should not take anything from authentic documents of the Holy Congregation, nor should he omit arguments, whether from the decrees of the Holy General Council, or from the decisions of the Roman Rota, when the matter requires it.

[*Latin ed. p. 504*]

504 APPENDIX XVII then, and adds ten scotinae to those already pertaining to the investiture. Finally, offerings – any other offerings, which are to be considered suitable – are received from those who are ready to pay, in one hundred and ten scotinae. If any condition is attached to the offering, or if any other requirements are necessary, the offering is rejected, as if it were uncertain. It may happen that the offeror is given a definite term: if this is

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not the case, then it is necessary to compare and exhibit the safeguards to the Church, so that, once this has been clearly established, access to receiving other, albeit smaller, offerings is opened. Once the offerings have been duly presented, the question arises whether there is a place for penance, so that the offerors may be able to retract what they have done. In this matter, it is necessary to distinguish between known edicts and invitatory edicts: deliberative judgments cannot be pronounced with certainty if the person with whom the agreement is to be made is not known; then the question arises, whether these are deliberative, or invitatory, offerings; the former are those which involve a promise of something to be done in favor of the deliberating party; the latter are those by which those who are expressly warned are informed that the matter of the offerings will be considered; it is said that this exception applies to the case where, immediately and without delay, it is declared what specific person is to be involved; for then, those things that are feared, are avoided. The author assigns the reason for this distinction: in civil law, obligations for a named person are admitted and enforced, but they are rejected in ecclesiastical law; this is because it is not clearly apparent whether the contract, of which we are speaking, involves a benefit to the Church, or not, and whether the offerings are to be rejected or accepted; but once this term has elapsed, the offeror can revoke his offerings and withdraw from them. However, when it comes to contracts with the Church, the author notes that the same applies; that is, these offerings are considered obligatory.

[*Latin ed. p. 505*]

xvii. 50. That the offerings of the twentieth and sixth, according to the practice of the Sacred Congregation, are always to be declared obligatory, and that no deliberation should be held concerning them, is a rule. The twentieth and sixth are considered to be established and customary, and all arguments to the contrary are rejected. The amount prescribed, that is, the greater part of the twentieth, can be greater than the twentieth itself; the greater part of the sixth can be greater than the sixth itself; but neither can be less. This is especially to be said concerning the sixth, from which it follows that, when a matter is referred to it, it must be considered that the sale was made according to the law, so that the agreement shall be valid, or remain valid, if another does not offer a better condition within a certain time; and also, concerning restitution in contracts, in which the original state is restored, and also concerning the restoration of property by the Ordinary, and concerning the rules. It is declared that the value of the twentieth and sixth is determined by the local custom, and that it is not to be declared, unless after the Apostolic Beneplacito has been obtained by the Ordinary. The same applies to the experiments of the twentieth and sixth, which are also subject to nullity if they are carried out without the aforementioned Apostolic Beneplacito; otherwise, only a small amount is

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to be considered. It is also declared that fifty Roman coins do not exceed the amount of the twentieth, where the aforementioned custom is present; otherwise, only a small amount is to be considered, which is twenty-five ducats of the Camera (which is equivalent to forty Roman coins). The duration of the twentieth extends to twenty days, and its term begins to run from the day on which the executorial decree has been issued by the Ordinary; the duration of the sixth is three months. The terms of the twentieth and sixth cannot be extended, nor can they be shortened by the Ordinaries; moreover, they cannot be contracted by the Ordinaries. However, the Sacred Congregation can shorten the terms, but it cannot extend them. The twentieth and sixth offerings, which are greater than the prescribed amount, are subject to the Apostolic Beneplacito. Concerning rescripts, and their execution, it is declared that...

[*Latin ed. p. 506*]

506 xvii. APPENDIX: The execution pertains to Sestri Ponente, either for the satisfaction of a debt or its extinction. Furthermore, other matters concerning the improvement of properties, and much more graciously, concerning the restoration of the same, are handled. In the latter case, the grace is not immediately granted by the Supreme Pontiff himself, but may be delayed by someone. One may construct a building on a property that he already possesses; and such matters also pertain to those which the Church previously possessed. However, a clause must be included at the discretion of the Bishop or another executor: this is considered merely an addition, and therefore the executor is not required to indicate it. Stable and profitable properties should be invested in; and among properties, those that are more suitable should be preferred. Therefore, the investment in stable properties is a true investment. Rescripts granted in a formal manner are only those in which the Pontiff grants grace afterwards, and it is permitted, even if he himself does not make it, but rather commits, or gives a mandate to someone, such as an Ordinary, to grant it under certain conditions, which the Author specifies. The delegation of the Holy See to an Ordinary extends also to a Vicarious General, but only in the execution of the delegation. If the Bishop has granted something to the Vicarious, the Bishop cannot do so unless the Vicarious wishes to delegate it to him; but such a delegation cannot be made in the case where the property in question is entirely within the jurisdiction of the Vicarious. Furthermore, it is generally granted that, especially in parsimonious funds, such as the Cassa di Risparmio, rescripts granted in a formal manner expire upon the death of the Pontiff. Regarding the eighth chapter, which concerns the acts that must be carried out in ecclesiastical matters, the following rule applies: those matters that pertain to proceedings and resolutions, such as those concerning auctions, must be handled; therefore, those who are experts in ecclesiastical courts must perform the duties pertaining to the valuation of

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the property that is to be alienated, by means of comparison, affixing of edicts, and describing the offerings in the schedules. From this definition, the Author infers that an investment does not consist of cash, but rather of the purchase of property or the placement of funds that yield fruit.

[*Latin ed. p. 507*]

XVII. Concerning the acts by which a fund (estate) is transferred to a major creditor, so that nothing is said about the execution of the decree which is absolved in the last chapter concerning movable church property, and sacred furnishings, which have been alienated, in the tenth chapter, and concerning the alienation of movable and sacred furnishings. On the contrary, the acts which are frequently raised concerning the completion of the alienation must be stipulated with a public notary; two principles are established by the Author. The first is that, therefore, movable church property, which can be preserved by being kept, is prohibited from being sold. But notaries are obligated to deliver a complex instrument, a copy of which is to be given to the parties, concerning the solemnities prescribed for the alienation. The second is that, when it is a question of sacred furnishings, the expenses necessary for such acts depend on an expert, and the general rule is that those who are to be held liable for them must be proclaimed in edicts, as usually happens, and therefore, in order to avoid disputes, it is very important to proceed with due diligence. If, however, nothing appears to have been agreed upon, and the value is estimated to be less than twenty-five gold coins, then, according to the saying, "he who suffers the inconvenience shall bear the expense," half of the expenses shall be borne by the church, and half by the alienator. But if the acts concern the benefit of the alienator and not the church, such as the extinction of debts, the redemption of obligations, the cancellation of mortgages, public registry, and other similar things which concern the benefit of the debtor, the expenses for which are necessary in these cases, are not to be borne by the church, but only by the debtor. Indeed, conversely, the expenses are to be borne by the church if only the benefit of the church is concerned. Finally, in order that the arguments presented by the Author may not seem burdensome, we have touched upon these matters briefly; those who wish to know them more thoroughly and clearly must consult the work of the Author, which has been so well elaborated and perfected.

[*Latin ed. p. 508*]

APPENDIX XVIII. INSTRUCTION FROM THE HOLY PENITENTIARY CONCERNING THE CONTRACT WHICH THEY CALL CIVIL MARRIAGE.

1. "That which has long been feared, that is, that the Bishops, both individually and collectively, with zealous and learned minds, and many learned persons, and even the Supreme Pontiff himself, have endeavored,

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with their authority, to keep away, we now see, alas, established in Italy: the so-called civil marriage contract. This contract is no longer a mere evil that the Church of Jesus Christ must lament beyond the Alps, but it is an evil that, transplanted into these regions of Italy, threatens to contaminate society and Christian families. These grievous effects have been observed by the Bishops and Ordinaries of the places, some of whom have already warned their flocks with opportune instructions; and others have made diligent recourse to this Apostolic See, in order to obtain norms by which they might regulate themselves in this important and perilous matter. Although, by order of the Supreme Pontiff, this Holy Tribunal has already given particular instructions in response to requests, and has endeavored to satisfy the petitions which are multiplied daily, nevertheless, in order that these increasing requests may be satisfied, the Holy Father has ordered that, through this very Tribunal, an instruction be sent to all the Ordinaries of the places where this unfortunate law has been promulgated, so that they may send it to those under their jurisdiction."

[*Latin ed. p. 509*]

x xviii 509, debba servire, tu et vos, dirigendo con norme generali la purezza dei costumi, la santità di ciascuno di voi, per regolare il matrimonio cristiano, e procedendo concordemente, con un solo animo, per sostenere la purezza dei costumi e la santità del matrimonio cristiano.

2. «Ma nell'eseguire questi ordini del Santissimo Padre, questa Sacra Penitenzieria ritiene superfluo ricordare ciò, e quindi revoca, ciò che è dogma notissimo della nostra Santissima Religione, cioè il matrimonio è uno dei sette Sacramenti istituiti da Cristo al Suo Corpo Mistico, cioè alla Chiesa stessa, alla quale lo stesso Gesù Cristo affidò la dispensazione dei Suoi divini misteri, perciò appartiene alla Chiesa, alla quale lo affidò, e solamente a Lei compete regolarlo. Pertanto ritiene superfluo ricordare ancora la forma prescritta dalla Concilio di Trento, sessione XXIV, capitolo 1, de Reformatione Matrimonii, senza la quale, nei luoghi dove essa è stata promulgata, il matrimonio non può essere validamente contratto.»

3. «Ma da queste ed altre massime e dottrine cattoliche, i Pastori delle anime devono formare istruzioni pratiche, con cui facciano comprendere ai fedeli quello che la Santità di Nostro Signore proclamava nel Concilio segreto del 27 settembre dell'anno 1852, cioè che può essere concesso il matrimonio, in quel tempo, e quindi anche in futuro, ai fedeli, affinché sappiano che il matrimonio è un Sacramento, e che, oltre all'unione di un uomo e di una donna, non può essere un altro Sacramento, e che, oltre all'unione di un uomo e di una donna, non può esserci un'altra unione tra un uomo e una donna, fatta valida dalla legge, che sia nulla, turpe e

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dannosa, e che tale non sia un Sacramento, ma solo concubinaggio.»

[*Latin ed. p. 510*]

510 APPENDIX XVIII 4. « E da ciò potranno facilmente dedurre che l'atto civile davanti a Dio, e della sua Chiesa, non può essere considerato in alcun modo come Sacramento, né come contratto; e che, così come la potestà civile è incapace di legare i fedeli in matrimonio, così è incapace di scioglierlo; perciò, così come questa S. Penitenzieria ha già dichiarato in alcune risposte ai dubbi particolari, ogni sentenza di separazione intorno a coniugi uniti in matrimonio legittimo davanti alla Chiesa, pronunciata da laica potestà, sarebbe di nessun valore; ed il coniuge che, abusando di tale sentenza, osasse unirsi con altra persona, sarebbe un vero adultero, o, per essere più precisi, un vero concubinario: tanto sarebbe falso presumere di stare in matrimonio in forza del solo atto civile, e l'uno e l'altro sarebbero indegni di assoluzione finché non rinsavissero, e non si sottometterebbero alle prescrizioni della Chiesa, non tornando a penitenza.»

5. «Quantunque però il vero matrimonio dei fedeli allora solamente si contrae quando l'uomo e la donna, sciolti da ogni impedimento, dichiarano il mutuo consenso davanti al Parroco e ai testimoni, secondo la forma del Sacro Concilio di Trento, e il matrimonio così contratto abbia tutto il suo valore, e non abbia affatto bisogno d'essere riconosciuto, o confermato dalla Potestà civile: tuttavia, per evitare vessazioni e pene, e per il bene della prole, è necessario che la legittima potestà non sia riconosciuta dalla laica Potestà, che altrimenti...»

[*Latin ed. p. 511*]

"It is fitting, and indeed necessary, to avert the danger of polygamy, and it appears opportune and expedient, that these faithful [Catholics] should, after having validly contracted marriage before the Church, present themselves to the civil authorities, intending thereby only to perform the civil ceremony."

"6. For the same reasons, so that they may not, in any way, contribute to the execution of that infamous law, the pastors shall not admit, without distinction, those faithful who, because they are forbidden by the law, would not be received as legitimate spouses by the civil authorities, and therefore, they must not be easily admitted to the civil act. In this matter, they must use great caution and prudence, and seek the counsel of the Ordinary, and let it not be easy to give assent; but in more serious cases, they should consult this Sacred Tribunal."

"7. "That it may be understood that, if it is opportune and expedient that the faithful, by presenting themselves to perform the civil act, should make known to the civil authorities that they are legitimate spouses according to the law; nevertheless, they must never perform such an act without having previously celebrated the marriage before the Church. And if, perchance,

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coercion, or an absolute necessity, which should not easily be admitted, should lead to the need of reversing such an order; then, all diligence must be used to ensure that..."

[*Latin ed. p. 512*]

The matter concerning marriages should be expedited as much as possible, and in the meantime, the Church should be informed, so that the spouses may be separated if necessary. Regarding this matter, those who are about to marry are urged to follow the doctrine developed by Benedict XIV in the aforementioned Brief, to which reference has already been made, and which was subsequently confirmed by Pius VI in his Brief to the Bishops of Galliae, dated September 20, 1791; and by Pius VII in his Brief to the Bishops of the Marche, dated June 11, 1808. After these events, it is easily seen that the practice hitherto observed concerning marriage, and especially concerning parish registers, betrothals, and impediments to marriage of any nature established or recognized by the Church, cannot in any way be altered.

8. "And these are the general rules which, in obedience to the commands of the Holy Father, this Holy Penitentiary has deemed it proper to set forth, and in accordance with which it rejoices to see that many Bishops and Ordinaries have already issued their instructions, and it hopes that all others will do the same, so that, by showing themselves vigilant pastors, they may merit and receive a reward from Jesus Christ, the Shepherd of all the Pastors."

"Given in Rome, by the Holy Penitentiary, on January 15, 1866."

A. M. CARD. CAGIANO

P. M. L. Peirano, Secretary.

[*Latin ed. p. 513*]

Most Holy Father, Congregation! Council, Parochial. On the 22nd of December, 1860. Session 21, chapter 6, concerning reforms. Summary of the facts. After repeated complaints made in the name of *nullitatis A. to the Episcopal Curia against the local Parish Priest N., a summary investigation was instituted against the aforementioned, from which the following charges were deemed sufficiently proven to the Curia, namely: 1. Excessive and harsh severity of Parish Priest N. in punishing children through beatings, and adults through the involvement of the secular police. 2. An insatiable passion for games and conversation, which frequently compelled him to absent himself from his parish, and to go to neighboring towns; hence, he often returned home late, in the middle of the night, or even early in the morning. 3. Notable negligence in his pastoral duties, and in the administration of the sacraments, due in particular to a meager income

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from foreign sources. 4. Notable distractions during public divine services, not without the admiration of the people. 5. A culpable neglect in assisting the dying, of whom some, through his fault, died without the sacraments. 6. Finally, a grave aversion and alienation of the parishioners, to such an extent that when the Parish Priest N. celebrated the divine services, the parishioners avoided the church, refused the sacraments, and frequently frequented neighboring churches. Hence, considering the reasons of public utility and for the sake of peace, a judgment was issued by the Curia, by which, as a provisional and temporary measure, a Cooperator was appointed to Parish Priest N., at the expense of the same Parish Priest, until the cause of this provision ceased to exist. This provision was subsequently modified, so that it was permitted and ordered that the Parish Priest and the Cooperator alternate in all functions of divine worship, with the proviso that the parishioners retained the right to approach the Cooperator for the administration of the sacraments and for the assistance of the sick. Records, volume I, section IX, page 33.

[*Latin ed. p. 514*]

Regarding the Parochial matter. The Parish Priest, appealing to the Metropolitan Curia, obtained a judgment in his favor from the Judge of this Curia, namely: the penal sentence against Parish Priest N., as exceeding a just measure of punishment, was not upheld; therefore, the assistant assigned to him was to be recalled; and the Parish Priest who made the appeal was to be severely reprimanded for culpable negligence in his parochial duties. Furthermore, the expenses of the judgment and the salary of the assigned assistant were to be borne by the Parish Priest. In turn, this episcopal judgment was appealed by the Curia to the Apostolic See. However, while the appeal was pending, the Bishop, perceiving that the discord between Parish Priest N. and the parishioners was increasing daily, to the detriment of their spiritual well-being, by means of another judgment, condemned the Parish Priest to exchange his parochial benefice with another within three months, and in the meantime suspended him from all exercise of jurisdiction and ministry, except for the celebration of private Mass. Consequently, the Parish Priest again appealed this judgment to the metropolitan See, which, however, declared its incompetence due to the pending litigation before the Apostolic See. Subsequently, the Parish Priest also brought his appeal to the Holy See. The arguments presented on both sides in the following discussion will be found in the subsequent sections.

A Synopsis of the Arguments: The Metropolitan Curia, in opposing the judgment of the episcopal Curia, argued that the investigation instituted regarding the accusations against the Parish Priest was deficient and lacking. It was not investigated why the accusers sought out the Parish Priest: whether, for example, they were driven by personal hatred and a desire

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for revenge, or rather by a desire to address the public ills of the parish that were attributed to the Parish Priest. Moreover, since Parish Priest N. had been governing the parish for ten years, the charges did not refer to the most recent years, so that it appeared that the events were fabricated and invented, which would have been forgotten with the passage of time. Therefore, the actions of the Parish Priest should first have been reviewed, and if he was found to be without fault, he should have been given admonitions to return to sound practice.

[*Latin ed. p. 515*]

PAROCHIAL. 515 Furthermore, not all of the accusations against the Parish Priest had been communicated to him so that he could defend himself. Moreover, the Metropolitan Tribunal, after carefully examining each accusation, observed that it was indeed true that the Parish Priest had sometimes been excessively severe with young people, and that he had sometimes acted hastily in this matter; but the same witnesses testified that not everything was in accordance with the truth, and that certain matters, which were attributed to him in two cases from a long time ago, should be considered of minor importance. Regarding the accusations against Jude, which involved prolonged nights, the witnesses affirmed that this rarely happened, and only when the force of the rain prevented his return. Finally, after omitting the lesser imputations, the same Tribunal considered the negligence in the administration of the Sacraments, and found only six cases of such negligence in the entire decade of his pastoral care; however, in some of these cases, the Parish Priest had not been informed; in others, the circumstances of Jude and his absence from the Parish were excluded; or a false or exaggerated accusation was discovered; or other circumstances were present which, if they did not entirely excuse the Parish Priest's negligence, at least did not make it as serious as was claimed. Nevertheless, although the penalty imposed on Parish Priest N. was considered to be excessively severe, given the reasons, namely the expenses for maintaining a Coadjutor, and especially due to the disgrace that would result; nevertheless, the same Tribunal considered it necessary to seriously warn the Parish Priest, due to his immoderate fondness for Jude and his conversations, due to his prolonged stays outside the Parish boundaries, even until late at night, due to his distractions, and due to his neglect in performing sacred duties, due to his anxiety in preserving health and life in cases in which a good pastor should even give his life for his flock, and finally, due to his harshness in punishing both children and adults. Furthermore, the Parish Priest defended himself before the Apostolic See against another broad judgment, by which the transfer of his benefice was decided, and he maintained that this judgment should also not be upheld, not only because he said that it was based on the same reasons as the first judgment; but also because it was issued while an appeal was pending before the Apostolic

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See, in which case, without a valid cause for appeal, nothing could have been changed.

[*Latin ed. p. 516*]

SECTION 6. PAROCHIAL. THIS WAS THE MATTER BEING HANDLED BY THE EPISCOPAL CURIA IN DEFENSE OF ITSELF. – In defense of its previous judgment, the Curia cited chapter 5, "On the Permutation of Things," in which it is written: "If the Bishop has ascertained that a cause is necessary, he may lawfully transfer persons from one place to another, so that those who are less useful in one place may be more useful elsewhere." Relying on this text, the Doctors held that it is entirely within the Bishop's power to compel the Cleric to exchange benefices with another, provided that an urgent reason of public utility demands it, even if this occurs without the fault of the beneficiary; for example, if a grave aversion and hatred arises among the people against the Parochus, so that his words no longer bear fruit, the people despise the divine, and scandals arise. For the public good must be preferred to the private, as others teach, Reiffenst. in the cited work, title, no. 88 and 39. Nevertheless, it was added that a milder course of action had been taken with the Parochus in the present case. For a Cooperator had been added to him, as noted in the cited Reiffenst. ibid., no. 40, and indeed for a time, with the further permission for the Parochus and Cooperator to alternate in performing the sacred functions. It could not be that the care of souls should be left entirely to him, since a grave aversion had been aroused among the people. Regarding the judgment of the metropolitan judge, the same Episcopal Curia observed that this judgment was based on a false premise: for it falsely assumes that an investigation was instituted in order to punish the Parochus with a penalty proportionate to his guilt. In fact, nothing more had been done than to determine, by means of an administrative provision, what remedy would be necessary to resolve the unfortunate discord that had arisen in that parish. Furthermore, in the same judgment, it was falsely assumed that such a provision could not be made according to law unless it had first been established that the Parochus was solely to blame for the evils that required a remedy; which is not in accordance with the precautions that are observed in ecclesiastical administration according to law. Indeed, Innocent III, chapter 10, "On Resignations," says: "But sometimes the Prelate is compelled to withdraw from his governance because of the wickedness of the people, when the people are so stubborn and so persistent in their rebellion that they cannot be helped by him, but rather, the more they resist, the more justly may his authority be diminished." These things are established concerning...

[*Latin ed. p. 517*]

PAROCHIALIS* 517. Un pastor completamente insensible, a quien se

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deben atribuir faltas de mayor gravedad, no debe ser considerado tal si no se encuentra que el pastor es completamente insensible al odio persistente hacia el pueblo. Sin embargo, el propio Arzobispo Juez reconoció y enumeró más faltas de las que pareció haber intentado excusar con demasiada facilidad. En lo que respecta a las deficiencias encontradas al finalizar el proceso, se observó, según Reiffenstuel, libro 5, título 1, § 4, número 209, que Engel, en el mismo lugar, establece que la publicación de los testimonios no debe ser hecha al acusado si a estos les amenazara un grave peligro o inconveniente; y además, se decía que esto solía observarse en la práctica de la misma diócesis. Sin embargo, si hubieran ocurrido omisiones que tocaran la sustancia del proceso, el acusado no debía ser absuelto, sino que el proceso debía ser completado, para que la culpa del juez no prevaleciera en detrimento de la república cristiana. Además, la Curia Episcopal, al proceder a la defensa de la otra sentencia, por la cual se decretó, como una medida provisional, la sustitución del beneficio parroquial, se enfrentó a las crecientes causas de discordia y aversión debido a la arrogancia del mismo pastor. A esto se añadieron algunas Resoluciones de la S. C. C. que trataban casos similares, y son las siguientes. En Turín, el 7 de julio de 1855, el Arzobispo prohibió a un pastor el ejercicio de su cura de almas, porque, descuidando las leyes de la prudencia y la solicitud por las almas, y despreciando las advertencias, se dejaba llevar tanto por su propia terquedad, que había perdido por completo la estima y la fe de sus súbditos. Por lo tanto, el Arzobispo había ejercido la facultad que el Concilio de Trent concede a los Ordinarios en la sesión 21, capítulo 6, sobre la Reforma, según la cual pueden designar, si es necesario, coadyuvantes o vicarios temporales a aquellos pastores que son inexpertos y menos aptos para el ejercicio de las sagradas funciones, siempre que sean de vida honesta. Y aunque se objetaron varios defectos por no haberse observado el orden judicial, por la omisión de la advertencia canónica triple y las citaciones, y aunque se cuestionara la veracidad o la gravedad de las imputaciones, sin embargo, a la pregunta: "¿Debe confirmarse o infirmarse la sentencia de la Curia arzobispal en este caso?", se dio una respuesta que confirmó la sentencia arzobispal con las siguientes palabras: "Afirmativamente, en la primera parte; negativamente, en la segunda parte; y en lo que respecta a la restitución, se pospone hasta que el Orador demuestre su pericia e idoneidad para administrar la parroquia."

[*Latin ed. p. 518*]

518. PAROCHIAL. Also, in Eichstätt. On July 21st, August 1st, and September 22nd, 1742, when several complaints had been brought before the episcopal court against the pastor of a certain place, not only because of his immoral life, but also because of the neglect of his pastoral duties, in administering the Sacraments, visiting the sick, etc., and because of excessive cruelty in punishing children, and other similar matters, so

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that the minds of all were so inflamed that they refused to receive the Sacraments from him, and to participate in divine services; the Bishop first appointed a coadjutor to him; and then, when he understood that such a provision was proving useless, and that the evils arising from the hatred and animosity aroused against the pastor seemed to be increasing daily, he decreed that the pastor himself should seek counsel within four months regarding the transfer of the parish, so that the transfer would not be carried out ex officio. The case, having been appealed to the Holy See, the fiscal advocate insisted that the sentence be confirmed, proposing, among other reasons to be considered, that, according to a particular custom in the Eichstätt diocese, and in other parts of Germany, it has always been the practice for bishops to remove pastors of parishes from one place and transfer them to another, even against their will, if there is a just reason; that by more easily removing poorly performing pastors, scandals are more quickly eliminated, and the opportunity for heretics to ridicule the Catholic religion is taken away; that this could not be achieved equally if this custom, which has been maintained up to now, were to be altered in the future. Furthermore, he added that, according to the law, an innocent pastor can even be compelled to transfer to another benefice if otherwise the good of peace and the spiritual welfare of his flock cannot be adequately served, citing *Cap. Nisi cum pridem*, Glossa ibidem, Innocent, in cap. 8 *de elect.*, and in cap. *Tua nos.*, n. 5 *de Cleric. aegrot.*, num. 5, Federic. *de Sen. de permut. benef.*, num. 40, Paris, *de resign. I. S* cap. 3, num. 176, and others. Hence, the question arose: "Whether the judgment of the Eichstätt episcopal court is to be upheld in this case." The Holy See responded on August 11th – affirmatively – and on September 21st, the decision was confirmed with the addition of a clause, namely that the transfer should be carried out by the Bishop with a benefice of equivalent income.

[*Latin ed. p. 519*]

PAROCHIAL. 519 Finally, another suitable resolution was presented, which was issued in the case of Limburg. The change of parish occurred on June 27th and December 19th, 1857, against a certain parish priest, who was first compelled by a decree of the bishop to change parishes; then, persisting in his defiance, he was removed from the parish and subjected to penalties. However, that decree was based on serious reasons of hatred and aversion that had been aroused in the people against him, due to his harsh nature and imprudent conduct, from which, although warned, he never ceased. Many things were debated on both sides in that case, both concerning the form of the process and concerning the truth of the presented facts; nevertheless, the following questions were raised: 1. "Whether the decree of removal issued by the episcopal curia of Limburg is valid in this case." 2. "Whether the canonical penalties inflicted in this

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case should be lessened." The answer was: to both, affirmative. Regarding the second question, it was written to the Bishop to absolve the priest (N.) from the penalties and to reinstate him, and to provide him with another parish or benefice of equivalent income. Therefore, having thus explained these matters officially, it was necessary to consider in the present case whether such circumstances truly existed, so that it would be absolutely necessary to use these extraordinary remedies, which, for the good of the public, are permitted to prevent greater evils and scandals, respecting the law. Therefore, the following question was proposed: "Whether the judgments of the episcopal curia... should be upheld in this case?"

RESPONSE. The Sacred Congregation of the Council judged on December 22nd, 1860, that, considering the particular circumstances, there is reason for a change to another benefice of nearly equivalent income within six months.

FROM THE ABOVE, WE GATHER:

I. It is necessary to distinguish between the deprivation of a parish which has the nature of a punishment, and a simple economic removal, which is done either temporarily or permanently.

II. The deprivation of a parish cannot be done unless it is established that there are absolutely serious faults, for which, according to law, this most serious punishment of deprivation is inflicted, with due process of law, as prescribed in these cases.

[*Latin ed. p. 520*]

520. PAROCHIAL. III. The pastoral removal [of a parish priest] is to be effected for a twofold reason: either because the parish priest lacks the skill and suitability necessary to properly govern the parish, or because of a grave hatred and aversion of the people, such that, given these circumstances, the parish priest can no longer properly serve his parish. IV. In the present case, this pastoral removal occurred due to various concurring causes, among which the last was not the reason for the parish priest's actions, but rather his grave negligence, which caused the people's aversion, and which he exacerbated through his arrogance.

DIVISION OF A PARISH. August 23, 1864. Session 21, chapter 4, concerning the reform of ecclesiastical institutions. The territory was divided into two parishes, such that the parishioners were approximately one hundred in number, and were located two Roman miles from their own parish church A, while, on the contrary, they were very close to the other parish church B, so that, by reason of location, the parishioners appeared to belong more to the other parish B than to their own. Due to this excessive distance, to which two other causes were added, namely the difficulty of the journey to church A, and the convenience of the city in which the neighboring

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parish B was located, it happened that the parish priest of A scarcely saw his parishioners, except in the cases of baptism and marriage, so that they seemed to be without a pastor. Furthermore, this division of the parishioners prevented the parish priest of B from properly serving his territory, so that this parish priest was forced to pass through foreign territory, and in certain cases, even to bury the dead. Therefore, considering this irregular division of the territory, it could happen that the parish priest would not be able to recognize his flock, and much less instruct them in those things that pertain to faith and eternal salvation.

[*Latin ed. p. 521*]

DISMEMBERMENT OF A PARISH. 521. (For experience had shown that the children in that part of the territory were ignorant of the fundamentals of the faith), taking advantage of the opportunity when Parish A was vacant, the council decided to separate that part of the parish from Parish A, and to add it to Parish B, a division that the very nature of the place seemed to require. However, since these parishes depended on the cathedral chapter, the Bishop did not fail to present his plan to it, to which the chapter agreed, but with the stipulation that the Bishop himself would ensure that Parish A would not be made poorer by this division, and that, on the contrary, the burdens of Parish B would not be increased without due compensation. Having considered all these matters, the Bishop issued a decree in the year 1860, by which this division was perfected. After one year, in order to satisfy the request of the parishioners themselves, a new decree was issued, providing for a division of revenues. About three years after the first decree, complaints were raised against the aforementioned division by some who were in charge of the church building of Parish A, to which the cathedral chapter adhered, although both pastors of the aforementioned parishes refuted these complaints. These complaints, which were presented to the Sacred Congregation of the Council, contained matters of greater importance, which, along with other disputed issues, we will explain in the following discussion. Discussion concerning the objections. WHAT WAS OBJECTED TO THE BISHOP'S DECREE. — Generally, it was observed that any division of benefices appeared to be a kind of alienation, which is regularly prohibited by the canons: but this did not occur in the division of parishes, which disrupts the old social structure, destroys the accustomed relationship between the parish and its former pastor, and subverts long-established arrangements. Lotter, *De re benef.* I, 1, question 28, n. 17. Therefore, such a division of parishes should only be undertaken when there is a just cause and when other means are lacking to provide for the salvation of souls, as is stated in Derthonen, Dismemb. April 5, 1732; Terracina, March 17, 1781; Ancona, February 12, 1803. In the present case, however, this just cause

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seemed to be lacking; for...

[*Latin ed. p. 522*]

522. CONCERNING THE DIVISION OF A PARISH. For the distance of two thousand paces was indeed considerable, nor was access to the church difficult. Moreover, if such inconveniences existed, they should have been foreseen by Gregory XIV, who favored this parish and aided it with benefits and commemorative honors. Furthermore, the passage of the Parish Priest through foreign territory had, until now, not elicited any true complaints. Therefore, the decree of division appeared to be based on no cause that would render the division legitimate; indeed, a just cause cannot be greater or lesser convenience for the parishioners, otherwise, many parishes would have to be divided. And if the aforementioned distance caused some inconvenience, as the Bishop considered, an extraordinary remedy of division was not immediately to be employed, but rather a chaplain, or a vicar, should be appointed, according to the practice of the Sacred Congregation, as can be seen in Sedecen. Dismemb. of June 11, 1718, and in other similar cases. And indeed, division is considered a subsidiary remedy; therefore, it should have a place only in the absence of other means, as decided by the Sacred Rota, decree 21, number 10, before Falconerio, and by the Sacred Congregation, in the case of Cassanen. Dismemb. of December 17, 1740, and in Aquilana, Dismemb. of February 8, 1744. Furthermore, in order to prevent fraud, certain formalities are required according to the sacred canons; namely, the Rector of the church, or his Defender, must be heard, who must be appointed by the Bishop if the church is without a pastor; also, the parishioners, patrons, and all others who have an interest must be heard, as can be seen in chapter 1, concerning non-ecclesiastical matters, paragraphs 6 and 1, in Barbosa de officio et potestate Episcopi parochiali, paragraph 3, allegation 67, number 17, and allegation 18, number 4, in Ferraris, v. Dismembratio. However, it was added that the division made by the Bishop is perfected, even if the church is vacant, without, however, a Defender having been appointed to protect its rights; and the Chapter, from which the aforementioned parishes depend, only gave its general consent to the Bishop's request, but not specifically. Therefore, since less than a year had passed since the first episcopal decree, the Bishop was obliged to address the complaints of the parishioners regarding the inconveniences arising from the division, with a new decree, about which the Chapter had a discussion with the Bishop. Moreover, those who were in charge of the church's fabric, whose interest it was to acknowledge the division, were not at all notified.

[*Latin ed. p. 523*]

DIVISION OF A PARISH. 523 were present, and therefore, it seemed that the aforementioned decree should be rescinded due to the lack of

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observance of these solemnities. Fagnanus, in chapter "Ad Audientiam de Ecclesia aedific." (Concerning the building of churches), paragraph 29.

THOSE ARGUMENTS ADVANCED IN FAVOR OF THE DECREE.— The observance of the episcopal decree was, by its very nature, obligatory. It had been in effect for three years, and this recent appeal seemed suspicious; for it appeared to originate more from the efforts of certain parties than from any reason of justice, especially since neither parish priest had opposed the decree in any way; and three parishioners had petitioned for the restoration of the former parish. Furthermore, upon examining the matter according to the law, it was noted that a legitimate cause for dividing a parish is the distance between places, or the difficulty with which parishioners may access their church, Council of Trent, Session 21, chapter 4, and in the aforementioned chapter "Ad audientiam de Ecclesia aedific." How great this distance, or the extent of the parish, must be in order for parishioners to be considered unable to access the church without great inconvenience, is not defined by law, but is left to the judgment of the judge. Fagnanus, in "Ad audientiam," paragraph 18, and others. But the judge who is best able to assess the circumstances of the place and its inhabitants is undoubtedly the Bishop. Moreover, in the present case, in addition to the aforementioned distance and difficult journey, experience showed that the same parishioners rarely went to their church, but rather went to a nearby town to receive the sacraments; hence, the inconveniences mentioned above by the Bishop, which began to cease when the same parishioners were assigned to the parochial church of B. Therefore, there seemed to be a just cause for the division, as decreed by the Holy Congregation in the case of Aquinata, or Sorana, on January 29, 1848, and in the case of Verulana, on May 10, 1862. In the latter, the Holy Congregation responded that the division should be carried out according to the Bishop's wishes, even though, according to the decree of Pius VI, s.m., resident chaplains were established in the territory of Verulana, who exercised pastoral care under the respective parish priests. With these and other considerations in mind, an investigation was conducted regarding the aforementioned solemnities, and it was stated that, although the cause was deemed legitimate, even if those involved disagreed, the disagreement should be disregarded as being unreasonable. Therefore, even if the solemnities had been neglected,

[*Latin ed. p. 524*]

524. DISMEMBERMENT OF A PARISH. Once the legitimate cause is known, the decree for the division is confirmed to the highest degree. Fagnanus, loc. cit., nos. 30, 52; Ferraris, v. Dismembratio. Furthermore, it was stipulated in the case under consideration that a chapter had been consulted, which, in its general assembly, had given its consent, and in a subsequent decree concerning the division of revenues, the Chapter itself noted

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only that it should not be cited as an example against its own rights. Moreover, the decree for the dismemberment of the parish was unequivocally notified to the new parish priest, A. The parishioners, in turn, received the decree with a grateful spirit. Furthermore, it is uncivil to rise up against one's own confession, and that which has once been approved cannot be reprobated. Having considered these matters, the following question is proposed: "Whether and how the episcopal decree of dismemberment of October 24, 1860, is maintained in this case." RESOLUTION. The Sacred Congregation of the Council, having knowledge of the cause on April 23, 1864, judged it fitting to respond: affirmatively in all respects. FROM THE ABOVE, WE GATHER: I. That in order for the dismemberment of a parish to be legitimately carried out, two things are required: namely, a just cause, and external formalities. II. A just cause is considered to be "difficult access to the parochial church," either due to great distance, or due to the difficulty of the journey. III. In the present case, considering the particular circumstances of the place, both dismemberment and union have taken place. For it was not necessary to establish a new parish, nor could it have been erected due to the lack of a suitable location, and for other reasons. IV. Nor were the external formalities lacking, and if any deficiency had occurred, it was sufficiently remedied by the subsequent consent, which is to be considered more than sufficient, given the legitimate cause for the dismemberment.

[*Latin ed. p. 525*]

OF MARRIAGES. July 8, 1865. Session 24, concerning Reforms. Summary of the case. Caia, nineteen years of age, approached the Episcopal Curia, requesting that the testimony denying the freedom of Titus be rejected, and that he be compelled to fulfill the bond of betrothal, as Caia herself had promised, and moreover, had been violated by him under the same bond of betrothal, with armed force. Titus, for this reason, was summoned by the Vicariate General to the Curia, and presented himself, almost unaware of all that was being alleged against him. The process therefore proceeded, and the case was decided with a judgment favorable to Titus: "Since the betrothal is not proven, neither by instrument, nor by the faith of the Parish Priest, nor by witnesses, nor by certain signs, we declare, we decree that no impediment whatsoever has been produced by (Caia), and that (Titus) is absolved from the impediment and free to contract marriage with another woman." Caia, not agreeing with this judgment, appealed to the Sacred Congregation of the Council, and added to her prayers a document from a certain public Notary, in which nine extrajudicial witnesses declared: "that they fully know that Caia had given her faith to Titus, so that, despite any difficulty, the marriage would be contracted; and furthermore, that on a certain day, it became known publicly that Caia had been violently and with armed force violated by Titus." After the necessary documents were

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requested from and received by the Sacred Congregation of the Council, the case was again examined by the Sacred Congregation. Furthermore, from the judicial testimonies of the witnesses, it appeared that the act of rape had indeed been committed; however, the witnesses seemed to speak too vaguely about the faith of the betrothal.

SYNOPTIC DISCUSSION: DEFENSE OF CAIA. — It was observed, ex officio, in favor of Caia, that the existence of the betrothal could be demonstrated in the manner in which such facts can be demonstrated, namely, by valid indications and conjectures, which, if considered separately, may not have the force of proof, but, when considered collectively, may sufficiently exhibit the truth.

[*Latin ed. p. 526*]

526. CONCERNING MARRIAGE. proof. Furthermore, in the case of the betrothed, not only public reputation was a factor, but the very betrothal seemed to be suggested by the close familiarity that existed between Caia and Titus. Especially since Titus himself, when questioned by the judge, denied everything, even those things that were most clearly proven by the facts; therefore, no credence should be given to his denial. To this was added the most serious argument of presumption, due to the rape that was said to have been committed, along with the promise of marriage: but in fact, there was no doubt about the honorable and commendable character of Caia, and therefore, it seemed that the canonical sanction in chapter 1 concerning Adultery and Rape should apply, according to which Titus was obligated to provide Caia with a dowry and to take her as his wife. DEFENSE OF TITUS. Titus appointed a Defender (Î) in the City, who, with accurate arguments, demonstrated that there was no basis for the existence of the betrothal. Starting with firm and unquestionable principles, he argued as follows: namely, since a betrothal contract so restricts a person's natural freedom that it leads them to be permanently bound to the yoke of marriage, the most conclusive proof is required to demonstrate its existence, so that « in any» even the smallest doubt, the Judge must pronounce « the» betrothal null and void. The Roman Rota, in the case of Ventimilien, on February 8, 1705, before Borullo, § 2. Furthermore, there are two constitutive elements of a betrothal, namely, the free promise of one party, and the free acceptance of the other party of the future marriage, L. 1 ff. de Spons. and chapter 31 de Spons. et Matr.; if either of these elements is lacking, the betrothal contract must necessarily be considered void. In fact, the Defender carefully endeavored to demonstrate that there was neither one nor the other promise. At the beginning, he judged that what the Vicarius capitularis had written to the Sacred Congregation was true, namely, that such perversion had been introduced into betrothal contracts in that diocese that it was necessary to decree that betrothals would not be accepted in the future unless they were proven by the parish priest. Further-

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more, considering the quality of the witnesses (for they were witnesses of intimate circumstances), he asserted that their testimonies should be considered suspect. Proceeding accordingly, the Defender extracted, with carefully chosen words and sentences, from those testimonies, and it perhaps appears that (1) The cause was defended by Franciscus Santi, Advocate.

[*Latin ed. p. 527*]

OF BETROTHALS. 527 Concerning Titus's intention and desire to bring about marriage with Caia: but it was shown that the intention and desire to bring about marriage do not constitute a betrothal contract. Indeed, it was observed that the entire force of the testimony rested on public reputation and rumor. However, according to Cuiac. I, 47 concerning Witnesses, "Testimony is received as an auxiliary of another proof, not as a testimony that is itself valid and legitimate." And in title 20, L 2, Decretal, "Reputation is an auxiliary of proof, not a certain and firm proof." Therefore, etc. Furthermore, the Defender refuted the account of Caia as presented in her supplications, rejecting it as a mere fabrication or as ineffective in establishing a betrothal contract. For in her supplications, she stated that she had been engaged in another business that very night, at the very time that Titus, overcome by lust, prepared to commit murder, and affirmed his impudent desires with a determined mind, to which the girl is said to have replied, as if a legal expert, "I promise you, at this very time, when Titus, armed, threatened the girl, either to obey my will, or I will abandon you, disgraced, on the earth. You are my bride, etc." To these things, among others, the Defender pointed out that betrothals are only constituted by the free and mutual promise of the man and the woman, in a form similar to a marriage contract, chapter 31 concerning Betrothals and Marriages. And in this case, the Defender cited the authority of Coscu, de spons. fil. vot. 7, n. 79 and following, in which he says: "If, indeed, such a promise had intervened, and the woman affirmed that the man had made such promises while inflamed by love, and that he was urging her... such promises, as if arising from the impulse and ardor of lust, are in no way suitable for bringing about betrothals, because from them, neither consent nor a precise and deliberate will to contract marriage can be inferred. Indeed, in this case, the deflowered woman could well perceive that these promises were being made fictitiously, in order to entice and seduce her." From this authority, the Defender concluded that, even if there were any such promise in this case, it should be considered insufficient to constitute a betrothal contract. With these things adduced, since there is no effective betrothal promise in this case, the defloration committed alone...

[*Latin ed. p. 528*]

528. OF ENGAGEMENTS. The act of being led to the altar did not necessarily imply the existence of a valid engagement, as Reiflenst. L.A. tit. 1, it.

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67 states. Furthermore, the Defender of the Faith raised certain objections regarding the alleged violent and forceful act of defilement; namely, that if it were proven, then the open violence of the man and the adverse will of the woman would have to be demonstrated. However, as the Defender himself argued, if these elements were not present in the act, and if no injury to Caia could be demonstrated, then no compensation would be due. However, in the present judgment, the question was not about rape and the reparation of damages, but only about the existence of the engagement. For it is well known that there is one action that arises from engagements, and another that arises from a crime. The first action is governed by sections 2 and 10 concerning engagements and marriage, while the second is governed by sections 1 and 2 concerning adultery and rape, which are included among the penal laws in Book V of the Decretals. The first action is directed towards compelling the betrothed man or woman to enter into marriage if they have broken faith with the engagement. The second is instituted to punish the perpetrator of the rape, and to repair the injury and damages caused. In the present judgment, however, an action was instituted solely arising from the contract of engagement. Therefore, rape could not be adduced in this case as evidence to prove Caia's renewed promise. For it is admitted that the renewed promise of the honest girl is a sign only when a promise of marriage has previously preceded from the man, and the Defender had argued that the existence of the man's promise was not proven. Moreover, given the serious circumstances of the case, which seemed to suggest that Caia had provoked the man, especially through certain circumstances mentioned by Cosci in *De Sponsalibus*, FU, fam. vot. 7, n. 156, the Defender finally rejected the witnesses presented outside of court, citing the decision of the Sacred Roman Rota, no. 211, *coram Ratio*, in which it is stated: "Witnesses, during the pendency of the lawsuit, who are summoned and presented outside of court have no validity." Especially since the witnesses presented did not offer anything new. Having carefully considered these points in favor of Titus, we do not wish to overlook the observations that are relevant to the indicated law issued by the Bishop in that diocese in the year 1857, concerning the reasons for entering into engagements. On June 27th...

[*Latin ed. p. 529*]

MARRIAGES. 529 1868 Another question had been raised in the same Court concerning the validity of marriages, and a judgment was rendered declaring them null, primarily on this ground: that the aforementioned marriages had not been entered into before a Parish Priest and witnesses, in accordance with the aforementioned law. The case was appealed to the Sacred Congregation under the following doubt: "Whether the judgment of the diocesan Court should be confirmed or overturned in this case." The Sacred Congregation responded: "It is not established that there were mar-

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riages; and it is the opinion [of the Congregation] that the diocesan Court should be reminded of the nullity of the edictal law of February 4, 1857, concerning the necessity of the presence of a Parish Priest and witnesses for the validity of marriages." Since the edictal law was also mentioned in the records of the present case, it was, of its own accord, observed that nothing had been innovated concerning the solemnities and form of marriage contracted by the Council of Trent, nor could local ordinaries, in order to avoid greater scandals and damages, subject marriages to special solemnities other than those that flow from common law, as the Sacred Congregation declared on December 19, 1596, and in the *Bracarea* of doubts on January 26, 1715, Benedict XIV, *Instit.* 46, n. 12. Doubt. "Whether the judgment of the diocesan Court... should be confirmed or overturned in this case." RESOLUTION. The Sacred Congregation, having cognizance of the case on July 8, 1865, decided to respond: "It is not established that there were marriages; and it is the opinion that the diocesan Court should again be reminded of the nullity of the edictal law of February 4, 1857." From the above, it is gathered: 1. The case raised concerning the existence of marriages does not involve a judgment concerning damages resulting from defilement, if any, and the remedies to be provided, or concerning the punishment of the offense (1). (i) It is not correctly inferred from the present resolution that the man is held to be of no consequence, since the Sacred Congregation said nothing about compensation for damages. This question "did not arise in the present judgment; for no one raised this question." *Integrum Acta*, vol. I, p. IX. Therefore, it was incumbent upon the Court to inquire, as far as the law permitted, about the restoration of damages. See a similar case as we have cited on page 336 and following, and in note 2* on page 342. 34.

[*Latin ed. p. 530*]

330. OF MARRIAGE. II. Furthermore, you must understand that a Bishop cannot enact a law that establishes a requirement for the celebration of marriage that is different from the norms established by common law. III. For a Bishop cannot limit the faculty of the faithful that common law protects (1).

ON THE BENEFICE OF PAROCHIAL CHURCHES. April 18, 1363. Summary of petitions. The Archpriest N. of a certain parish church dedicated to Saint Matthew the Apostle, presented a suppliant petition, stating that within his parish there exists another parish called Saint Mary, to which the free collation [of benefices] according to the form of Trent is subject to the Bishop. This parish of Saint Mary, however, was separated from the mother church of Saint Matthew due to an earthquake, and remains separate in a ruined mountain, outside the common dwelling of the townspeople. Since September 9, 1861, the parish of Saint Mary has been vacant, and although the Bishop, as is customary, convened a meeting to select a new parish

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priest, the desired outcome (1) was as follows: "In the diocese of Valencia, it frequently happened that marriages were contracted by the same individuals with multiple persons; and therefore, it was necessary that grave impediments arise between both parties, and that disputes frequently arose in court, concerning which marriages should prevail, and which should be preferred. To promote the tranquility of the diocese, and to prevent such disputes, the Archbishop was asked to decree, in a synod held in his diocese, that no marriages should henceforth be valid that were contracted without the presence of the parish priest and at least two witnesses; but the prudent Archbishop, after considering the matter, refused; for he did not consider that he possessed such authority to extend a decree to marriages, as is stated in the 24th session of Trent, concerning the reform of marriages, by which clandestine unions are declared invalid. This matter was brought before the Sacred Congregation of the Council, which approved the opinion of the Archbishop, and recommended his counsel: provided that, in the aforementioned decree of Trent, nothing was innovated concerning marriages, and that they remained under the jurisdiction of common law, according to which, even without witnesses, they can be validly contracted. The response of the Congregation is found in I. 1. Decret., page 99 and page 196. You may also read our Institution 46, where we have discussed this matter extensively."

[*Latin ed. p. 531*]

THE ADVANTAGES OF PAROCHIAL UNIONS. 531 has not been achieved: since two individuals who presented themselves for the experiment were declared unfit to undertake the duties of a parish priest. Furthermore, there is no reason to believe that anyone from the clergy would desire to be appointed to the vacant parish, since there are four collegiate churches in the town, all of whose members enjoy a benefice, and whose revenues are greater than those that the parish of Saint Mary would provide after deductions. Moreover, the church of Saint Matthew is located on the summit of a steep mountain outside the town, while the church of Saint Mary is situated in the center of the town; in the latter, more solemn functions are celebrated, etc. Having explained these matters, the aforementioned Archpriest requested that, at least during his lifetime, such parishes be united, with the honors and burdens of both being preserved. Such requests were submitted to the Bishop, as is customary, for information and consideration, and so that he might report on the annual income, burdens, and number of souls of each parish, including the uncertainties of each benefice, and on the true necessity or evident utility of the proposed union. The Bishop, after considering these matters, foresaw that the requests of the Archpriest were consonant with the truth, and he highly commended the aforementioned petitioner, and, describing the meager revenues of these parishes, indicated the necessity and utility

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of the requested union. Especially since an entire population, consisting of ten thousand parishioners, could have access to hearing the word of God in the church of Saint Mary, which is located in the center of the town.

THINGS THAT WERE OPPOSED TO THE REQUESTED UNION.— I observed, by virtue of my office, that in the present case, the union was to be made in the manner that is commonly said to be the principal one, and which accomplishes nothing other than that the Rector of one parish would be the Rector of the other, while both, in the meantime, would retain their status and honors, Barbosa de offic, and pot. Epis. p. 3, alleg. 66, n. 4, 6. But unions of parishes are regarded as odious in law: Council of Trent, Session 24, chapter 13, especially if they are temporary and for the lifetime of the petitioners, since in the latter case, they seem to benefit the beneficiaries more than the church. Therefore, the Holy Congregation does not easily permit such unions, as is stated in the Florentine Union of March 18, 1820, and in the Lancianese Union of June 11, 1865. "Because, by the best of laws, dioceses and parishes have been distinguished, and pastors have been assigned to each flock..."

[*Latin ed. p. 532*]

532 ON THE ADVANTAGES OF PAROCHIAL UNIONS: "That those who have care of their own flocks may attend to them, lest the order of the Church be disturbed." Council of Trent, Session 14, Chapter 9.

THOSE THINGS WHICH WERE PRESENTED AS ADVANTAGES FOR THE UNION. – On the contrary, it was observed that the union of parish churches could be justly made, according to the text in Chapter 33 concerning Benefices, Chapter 1 concerning Ecclesiastical Matters, paragraph 6, and also according to the Council of Trent, Session 21, Chapter 5 concerning the Barbosa Reforms, as collected in *Doctrina in Concilio Tridentino*, Session 7, Chapter 6 concerning Reforms, paragraph 11, and others commonly. The just cause, however, is the utility and necessity of the Church, as stated in Chapter 33 concerning Benefices. It was observed, however, that in this case, there was no necessity arising from a lack of clergy, since there were many clergy serving in the collegiate churches in that town, from whom, at least for a vacant parish, an economist could have been chosen by the Ordinary. But concerning the necessity arising from a lack of revenues, it seemed impossible to doubt, since for this reason the parish of Saint Mary was without its pastor, and there was hope of finding a suitable priest who would undertake the care of souls in that parish for the same reason.

RESPONSE. – The Sacred Congregation of the Council judged on April 18, 1863, that the answer should be: negative, and that the Bishop should seek other remedies to increase the revenues of the parish of Saint Mary.

FROM THIS, ONE MAY GATHER:

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I. In the present case, there was no legitimate reason for uniting the parishes; indeed, it seemed that there might even be a reason for dividing those same parishes, if they had been united, considering the arduousness of the journey.

II. Nor was there a place for a temporary union, which would have been based on the idea of giving two benefices to the priest requesting it.

III. Rather, given the large number of people, more clergy should have been appointed to serve the people.

IV. In these circumstances, it is the duty of the Bishop to take care of the increase of revenues through ordinary legal remedies.

[*Latin ed. p. 533*]

533 M S, CONGREGATIO! OF CLERICS AND REGULARS. CONCERNING THE EXTINCTION OF A DEBT. April 28, 1863. Summary of the case. A chapter, consisting of canons, located on the island of Sicily, in the manner of a tithe, received a certain annual payment for certain fishing activities. However, when, in the year 1825, such a right of the canons to receive this annual payment was challenged, the chapter, defending itself, achieved victory, but not without considerable expenses. In the year 1855, the chapter was again brought to court, and the matter was debated concerning the validity of this annual payment, and in this new trial, the chapter prevailed. Hence, it was deemed advisable to arrange a certain settlement between the chapter and the owner of the aforementioned fishing activities, and in lieu of the payment, the chapter received certain assigned revenues from the public debt, and the agreement was confirmed before a Notary, without Apostolic authority. However, it was said that the expenses incurred in pursuing these lawsuits amounted to 1176 florins. Considering that the chapter believed that such expenses should be paid not only by the present canons, but also by future ones, because the expenses were incurred to protect the rights of the chapter, a plan was devised to reject such a burden on the chapter's funds in the following manner. Since four of the canons administered assets belonging to two pious institutions, they withdrew 1050 florins from these assets, with which a debt-bearing fund was established, so that the two pious institutions would be repaid with interest at a rate of six florins per hundred. The remaining 126 florins were paid by the present canons. Furthermore, these actions, carried out with their own authority and confirmed before a public Notary, were approved by the General Vicar.

[*Latin ed. p. 534*]

534 CONCERNING THE EXTINCTION OF THE DEBT. When all these matters had not been reported to the Archbishop, who at that time was suffering from a serious illness, and he subsequently became aware of these things, he fulfilled his office in the proper manner; that is, he made known

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to the Chapter to what extent the proceedings in these matters had deviated from the correct course of the Holy Canons, and he suggested remedies. To avoid causing boredom to the reader, we omit the historical account of the events that followed, as well as the rude manner in which the Canons behaved. What cannot be overlooked, however, is that the Canons presented their case before the civil magistrate of Piedmont, in order to obtain approval for those things that had been done contrary to the sanctions of the Holy Canons. Then, the matter being brought before the Most Holy Synod and the Royal Court, and the Canons returning to a more reasonable course, they proposed a certain method for extinguishing the aforementioned debt, by means of annual installments, excluding interest, so that the debt would be extinguished within a period of approximately ten years. Therefore, the case, under the following doubts presented to the Most Holy Synod and the Royal Court, was submitted for discussion. Above all, it was noted that, although the Church is most devoted to peace, she in no way shuns concord, but rather favors such agreements as is fitting; nevertheless, transactions concerning the rights of churches are entirely prohibited without the intervention of her authority. Extravag. Ambitiosae, in Constit. V. Pauli II, sect. 4, n. 9; Rota decis. 316, n. 10, part. 10; recen. S. C. Conc. in Viterbien, die 19 Septem. 1767, § a et passim. Especially since certain revenues of the public debt had been substituted for the rights of the Chapter (1). (1) See the case of Affrancai, p. 537. It will also be appropriate here to mention paragraph 12 of chapter VII, concerning the price of investment, which is found in the very useful work of Aloysius Advocatus Trombetta, entitled "Praxeos regulae circa contractus rerum eccles., etc.," of which we have spoken in Appendix XVII. In this paragraph, the following is stated: "Furthermore, it may be asked, whether money can be invested in the purchase of revenues from the public treasury, or in public mints or public bonds? By itself, this would not be a canonical investment; for it has been abundantly shown recently that an investment approved by the Holy Canons is that which is made in stable and profitable assets, and if these are lacking, in land. Hence, as De Rosa says, "Reinvestment" must necessarily be made in "stable assets," as expressly stated in the Brevi per clausulam Aeque stabilium." Therefore,

[*Latin ed. p. 535*]

ON THE EXTINCTION OF DEBT. 535 Therefore, the transaction concerning the chapter's rights of the church lacked its proper strength. Furthermore, it was noted that the Administrators and the Chapter, without Apostolic approval, were establishing a productive debt, and that the Canons had not avoided the censures imposed by the Most Holy Canons, specifically by Constitutions of Martin V and Innocent VIII. Concerning the "De Nigris" concerning vacant benefices, chapter 56, paragraphs 1 and following, due to the interposed recourse to secular

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authority (f). A Brief for the Congregation requested: "that the sale of certain houses of the Church be used annually in the Holy Pietà of Bisarcio," claiming that "the Procurators would invest the price in the purchase of annual revenues; but I strongly opposed this, and I said that I could not allow it, because it would be contrary to the form of the Brief containing the faculty for limiting the fruits, from which an annual sum of 4 scudi is received from each hundred, so that in both cases, the same Confraternity would be exempted from the pretended obligation of making its annual investment." Hence, concerning the purchase of public revenues, a doubtful matter arose: "Whether, and how, should prayers of the Venerable Archconfraternity be answered in this case?" The same Holy Congregation, with the authority of the Supreme Pontiff, in the general meetings of July 8, 1854, responded: "Negatively in all cases, except for nominal debts, and public bonds, etc." It is, however, worthy of special attention that, in the parsimonious fund, in order to obtain this, special permission is required. Furthermore, concerning sums in stable investments, money is not permitted to be deposited in sacred buildings, and public coffers, especially in the patrimonial fund, commonly called "De Risparmi," except by order of the Sacred Congregation, in the sacred building, or in the public treasury, with the bond of investment. The aforementioned investments in the parsimonious fund are not permitted, because it does not generally favor such a canonical investment, as is clear from the above. Furthermore, the Archconfraternity of Pilgrims and the Sick in the City, which was obligated to invest certain sums annually in favor of the Pietà of the Mountain, because the bond provides that it is exempted from the obligation of the aforementioned annual investment, and that the deposits are not returned, so that there is no opportunity for them to be withdrawn; as has been found to have happened in some cases, so that they cannot be made in the sacred building, but rather they are exempted from the burden of the aforementioned annual investment, desiring to obtain the faculty from the Holy Congregation, until (I) See Appendix XIX.

[*Latin ed. p. 536*]

536 CONCERNING THE EXTINCTION OF A DEBT. However, since the Canons of Sicily claimed to defend themselves with the aforementioned decree, *Ambitiosae*, objecting that it had "no force" in the island, and therefore that an act of alienation was not valid by Apostolic approval; it was observed that this claim could not be substantiated in any way, and indeed, the contrary could be demonstrated. However, assuming the existence of this custom, it ought rather to be called a corruption than a custom. For it is contrary to the aforementioned Constitution, *Ambitiosae*, which is sanctioned with these words: "Therefore, let no one presume to violate this decree of ours, or to oppose it with rash audacity. For whoever shall

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attempt this, let him know that he will incur the indignation of Almighty God, and of the Blessed Apostles Peter and Paul." This Constitution, having been renewed by other Pontiffs, and perpetually maintained in force, cannot be opposed by a custom, according to what is taught by Peter in the Constitution *V. Pauli II*, section II, number 37 and following. Nevertheless, it was not overlooked that the Canons were not demanding freedom from the obligation to pay the debt, but rather, after having made the deposits each year, only a delay in time, which caused no prejudice either to the chapter mass, or to the pious institutions to which interest was paid in the meantime, until the extinction of the debt. Several points were then proposed: I. "Whether and how one should proceed with respect to these irregularities in the case." II. "Whether and how one should petition the Holy See for approval of the proposed method of extinguishing the debt in the case." RESOLUTION. The Sacred Congregation, after deliberations held on April 28, 1865, decided to respond as follows: To I. Regarding the petition for the absolution of the guilty from censures, and for a dispensation from any irregularity contracted, it is necessary to recite the seven penitential psalms once, and also to petition for the healing and validation of the transaction of November 15, 1860. To II. Affirmative, regarding the validation of the aforementioned debt, and for the approval of the proposed method of extinguishing it, provided that if the current chapter members do not extinguish the entire debt, their successors shall be bound to do so.

[*Latin ed. p. 537*]

ON THE CANCELLATION OF A DEBT. 587 From these [points], one gathers: I. Transactions concerning the goods or rights of churches, among acts of alienation, must be recorded. For indeed, some transfer of rights is involved. Therefore, such transactions, without Apostolic approval, have no validity. II. A chapter cannot establish a debt as a burden on the chapter's sustenance, even though it does so to cover the serious expenses incurred in defending chapter rights. For such an imposed burden, being a species of alienation, requires the proper formalities. III. Especially in the present case, another circumstance was present, worthy of reprobation. For the money was taken, by its own authority, from pious places, and this withdrawal seemed, in this case, to be a kind of usurpation. IV. Such acts, carried out without the intervention of competent authority, have added a measure of impiety, having been approved by a secular authority, and this request was entirely illegitimate. Therefore, the canons, knowingly acting in this way, could not be immune from censure, nor from the irregularity thereby contracted (1).

SEPTEMBER 1, 1865. Summary of the case. A certain pious man, from the ecclesiastical order, in his last will, had named two trustees, who, in fulfilling the testator's will, declared that a certain pious bequest had been left by him, namely, with these words: "It will be paid by the heirs a sum of

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twenty scudi annually; which sum must be paid for the funeral, which will be celebrated in the collegiate church of N./V., on the recurring anniversary of the deceased's death." The Chapter and the Ordinary concerning the legatee (1) See Appendix XIX.

[*Latin ed. p. 538*]

538. OF EMANCIPATION. They had rightfully accepted [the inheritance]; and, to secure this, the Canons did not delay inscribing [the inheritance] on a certain hereditary vineyard. The entire hereditary estate consisted of this single vineyard, of which the direct heir obtained ownership, paying to the beneficial lord annually the sum of 34 scudi and 92 denarii, as stipulated in the law (scutatorum 34: 92). On this vineyard stood a small house, which was in imminent danger of collapse; moreover, the beneficial lord asserted certain rights over this property against the direct heir, and was already preparing to initiate a legal dispute to enforce these rights. To avoid these damages, the heirs, acting as trustees, amicably met with the beneficial lord, agreeing that they would leave the vineyard to him, free and exempt from all dues, on the condition that the beneficial lord would provide a number of public debt securities, commonly known as "Consolidated" securities, equivalent to fifty scudi annually, which would correspond to the annual revenue of thirty-four scudi and ninety-two denarii. This agreement was most advantageous for the inheritance: for, in addition to avoiding the expenses necessary for repairing the house and for the impending legal dispute, the annual revenue of thirty-four scudi and ninety-two denarii was converted into fifty scudi in public debt securities. Therefore, since this concerned an inheritance related to a pious cause, the beneficial lord, having obtained a favorable opinion from the Sacred Congregation for the Council, humbly requested an Apostolic Brief, so that the agreement established between the parties might be ratified by its authority. The Sacred Congregation granted this request through a Rescript dated June 17, 1861, adding the clause: "that whatever pious obligations, as mentioned above, are established through this emancipation, shall be transferred to and apply to the new investment, and shall be understood to be transferred." Following the Rescript, the execution was sanctioned by a decree from the Ordinary, and then a solemn instrument was celebrated. Not long after, the heirs, as trustees, petitioned the Sacred Congregation of Bishops and Regular Canons, so that they might deliver public debt securities for twenty scudi annually, in accordance with the obligation they had undertaken, so that, after this assignment and delivery were approved, the mortgage inscribed on the vineyard could be removed and the vineyard left completely free. When the petition was presented, at that time, within the Sacred Congregation of Bishops and Regular Canons, no mention whatsoever was made by the advocates regarding the Rescript obtained from the Sacred Congregation

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for the Council, and it was only brought up when it was necessary to propose the case before the full assembly of the Sacred Congregation of Bishops and Regular Canons. Therefore, this Sacred Congregation...

[*Latin ed. p. 539*]

EMANCIPATION. 539 He did not hesitate to lend his hand to this matter, although it might perhaps be said that the matter fell under the jurisdiction of the Sacred Congregation. Therefore, the Ordinary was heard, who, by chance, was one of the two testamentary heirs: he certainly, together with his co-heir, not only agreed that prayers should be received, but even strongly insisted upon it. However, the legatee chapter, although it did not absolutely deny the deletion of the mortgage, nevertheless stubbornly resisted the assignment of securities for the sum of twenty scudi, and argued for as many securities to be granted as would be sufficient to realize a value of 400 scudi. The Cardinal, Protector of the legatee chapter, having considered a certain accidental circumstance, had come to agree with the opinion of the chapter. Since, therefore, such a proposal from the chapter was far from pleasing to the testamentary heirs, the matter was brought before the plenary tribunal of the Sacred Congregation, E. p. and R., on September 1, 1865, with the aforementioned considerations, raising a doubt. Disputatio synoptica. WHAT REASONS THE ORATORS PRESENTED. — The testamentary heirs argued, first of all, that they could not, considering the benefit and good of the inheritance, refrain from freeing the vineyard from the canon through a contract, which they call an emancipation. For it was necessary to repair the farmhouse, which was located in the vineyard and was about to collapse; it was necessary to bear the expenses which would certainly be necessary to maintain the lawsuit that was being prepared; but the resources of the inheritance were not sufficient to sustain this expense. Otherwise, the freeing of the vineyard would not only not diminish, but would greatly improve the condition of the heirs: for the income received each year would amount to not thirty-four scudi, but fifty. Hence, the Sacred Congregation readily offered its approval, promptly granting what had been requested. Given this necessity, it followed that, if the heirs were obliged to alienate the vineyard, the legatee church should also be subject to the same obligation, not denying its consent to the deletion of the mortgage. Furthermore, they added that it was the testator's intention that the chapter should receive twenty scudi each year, and that this would certainly be the case. Simultaneously,

[*Latin ed. p. 540*]

540. MANUMISSION. And therefore, the heirs, having paid annually to the Chapter legatee the sum equivalent to twenty scudi, and having delivered [the documents], were absolved from all obligations imposed by the testator, and it would not be permissible for the legatee to demand anything

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further from the inheritance. Finally, according to a common axiom – that which does not harm another benefits you – they observed that it would not harm the Chapter if it accepted the offered documents and obtained the twenty scudi from the public treasury: for whether by lottery or by interest, security would be ensured, and nothing could be more secure and reliable than the civil authority of the Apostolic See. Furthermore, at the end of each half-year, half of the debt of the debtors is paid without any delay by the treasury and received by the creditor. WHAT THE CHAPTER LEGATEE SHOULD ANSWER. He warned, above all, that he would not make any statement contrary to the celebrated manumission agreement: for in this matter, the heirs had made use of the right of trust, and all the more so because the approval of the Holy See had been obtained. Even though, strictly according to the law concerning the mortgage inscription, he could have opposed this agreement, and he could, nevertheless, it was not his intention to create such a difficulty for them, or to make the matter inextricable. He only proposed, for the sake of his duty, to protect the pious cause, that is, the Church, so that no harm would be done to it; and therefore, he maintained that another means should be found to ensure the Church's indemnity. The heirs, however, wrongly claim that they are absolved from all obligations, having delivered to the Chapter legatee the public debt documents as payment for the twenty scudi: in doing so, they would undoubtedly receive less than what the testator had ordered them. Furthermore, the benefit conferred on the Church by the testator in the bequest has two parts, one explicit and the other implicit. Explicitly, the testator designated twenty scudi for the Church. Indeed, if the substance of the matter is examined more closely, the delivery of those documents represented the nominal value of twenty scudi, but not the real value: for if the heirs were to sell those documents, no one would certainly accept them as payment for the sum of twenty scudi in actual money. Therefore, in order to bring the matter to an equal footing, nothing else...

[*Latin ed. p. 541*]

EMANCIPATION. §41. It was stipulated that the heirs should deliver as many bonds as would, taking into account their real value, amount to forty scudi. Moreover, the testator had expressly instructed the legatees that the right to receive twenty scudi should be applied not to any particular part of the inheritance, but to the entire hereditary estate: hence, if one part of the inheritance were lacking, the right to demand twenty scudi would remain in the other parts of the inheritance. However, if the bonds offered were accepted by the Canon, and if, perchance, any of them should suffer a diminution or total loss for any reason whatsoever, then the cause of the pious endowment would be compromised, and there would be no remedy for repairing such a diminution or loss. No one can deny that this difficulty has a great significance, as will be seen more fully in Appendix XX concern-

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ing the present matter. Therefore, the Chapter rightly concluded that the heirs, by offering these bonds, had paid less than what had been imposed upon them by the Testator. After these things, the last objection derived from the legal principle mentioned above vanishes of its own accord: for if a payment was made with the consent of the heirs to remove the mortgage from the inheritance, the legatees would not only be harmed, but their property would be put at risk, as can be clearly inferred from what we have stated. Finally, the Chapter noted that it could not accept the bonds without the authority of the Holy See; for the acquisition of bonds representing a public debt is not a true investment, as daily experience teaches, and it is customary in such cases to seek the approval of the Apostolic See. Indeed, when it is a matter of a bequest for Masses, the imposition of a tax, which otherwise would be equivalent to an investment in stable properties, is not permitted, as several Holy Congregations have clearly declared, and expressly in Burgos, at the church of St. Dominic, on April 30, 1729, and in Fermo, in the Office of Missions, on June 23, 1764; see also Ferrar. *De Voto Missae Sacrificium*, Article 2, number 24. After these things, the following question was proposed: "How and to whom should one pray for the grace granted in this case?"

[*Latin ed. p. 542*]

542. EMANCIPATION. RESOLUTION. The Most Reverend Fathers, in a plenary session of the Sacred Congregation for Bishops and Regulars, on the 7th of September, 1865, decreed: affirmatively, regarding an annual income of 25 scudi [a historical Italian currency] derived from public debt bonds, commonly known as "consolidato." CONTINUATION OF THE SAME MATTER. — This resolution did not correspond to the wishes of the heirs, who immediately petitioned the Sacred Congregation and obtained that the matter be subjected to a new examination. In the second presentation of the case, whether because they had not clearly expressed their request in the first instance, or because they could not deny the difficulty that the Chapter faced, based on a solid and irrefutable foundation (since, by accepting the twenty bonds of public debt corresponding to an income of 25 scudi, the Chapter was legally excluded from pursuing the other thirty bonds, which, when combined with the aforementioned twenty, constituted the entire inheritance of 50 scudi of the heirs, yielding the same income from that debt), the aforementioned petitioners declared that they desired nothing more in their prayers to the Sacred Order than that the Chapter be obligated to accept the offered bonds, and therefore to give its consent for the removal of the mortgage; however, they wished that this right be preserved, so that whenever the twenty bonds no longer represented an income of 25 scudi, or in any other circumstance they were called into question, they could validly and freely pursue their claim against the remaining thirty bonds, just as in

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the decree of the Sacred Congregation, dated June 17, 1861, of which we have already made mention. With this difficulty removed, in the general assembly of March 2nd of the current year, with the following question proposed: "Should we retract from the decision of September 7, 1865, in this case?" The Most Reverend Fathers decreed: "Retract from the previous decision, and it is to be decreed that a legacy be established in favor of the pious institution, from the annual income of 20 scudi derived from public debt bonds, commonly known as 'consolidato,' while maintaining the validity of the lien on the remaining income of 30 scudi, with the faculty of removing the mortgage." FROM THIS, ONE MAY GATHER: I. That which is done should be that which does no harm to oneself, and benefits another. II. The heirs are not freed from paying less than what was prescribed by the testator.

[*Latin ed. p. 543*]

ABSOLUTIONS. III. The imposition of a tax shall be equated to an investment in the ordinary manner. IV. However, this shall be limited if it concerns a legacy for the Mass, for which the acquisition of stable and productive funds is required. V. The acquisition of public debts through endowments shall never be equated to an investment.

DIVISION OF A PARISH. On December 18, 1863, June 3, 1864, and July 5, 1865. Competent authorities were consulted. In the archdiocese of N., there exists the parish of A, which possesses a large territory, although it does not have many parishioners. Formerly, it numbered approximately three hundred parishioners, but now it has more than four hundred. However, the parish of B, which is located fourteen Roman miles away, is poorer. In the year 1317, Pope Leo X, due to the poverty of the parish of B, united these two parishes, and entrusted them to the same pastor. Although the laws of this union are ignored in a lost document, it was established that the pastor had the power to reside in either parish. However, over time, custom prevailed, so that the pastor established his residence in the parish of A, attending to the parish of B through a curate, with canonically assigned revenues for his honest support. Now, the parish of B lacks sufficient revenues for the pastor's support. The people of this parish petitioned the Archbishop to grant them a separate pastor; and the situation reached the point that, when the parish of B became vacant, the people refused to accept a new curate. After prayers were offered to the Sacred Congregation of the Council and the Regular Canonries, the Sacred Congregation, regarding the matter, referred the petitions to the Archbishop for information, and, after hearing those concerned, he reported that he had heard the pastors of both parishes, and the patrons (for the parishes were subject to the patronage of a certain noble family). The pastor and the patrons, although they

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opposed the division of the parish,

[*Latin ed. p. 544*]

544. DISMEMBERMENT OF A PARISH. Regarding the division, it was deemed fitting in the constitution of a perpetual vicar, to be appointed by the parish priest, that he be assigned the same revenues as the chaplain received, but with the provision that a portion of these revenues be set aside for the maintenance of the church, and that certain rights of honor be reserved in favor of the parish priest of the church of A, concerning the new vicariate. The Archbishop, expressing his opinion, considered it: 1. That, due to the distance and for the sake of peace, a spiritual division of the parishes was appropriate. 2. That the parish of B, having always been a parish, should have a new parish priest with the title and prerogatives of a parish priest. 3. That the right of patronage should be reserved in favor of the parish priest of the parish of A, over the church of the parish of B, excluding all other rights of honor, in order to avoid future disputes. 4. That nothing should be changed regarding the revenues, which the Archbishop considered sufficient, both for the maintenance of the church of B and for the establishment of a parish benefice. We omit the legal principles which demonstrated that such an opinion of the Archbishop was sufficiently in accordance with the law, after what we have presented in the case above, page 520. Therefore, the following questions were proposed to the Sacred Congregation: I. "Whether and in what manner approval should be given to the requests, either for the absolute division or for the establishment of a perpetual vicar in this case." "And to what extent, affirmatively or negatively, regarding the first or second part." II. "What revenues should be established for the adequate support of the new vicar, for the maintenance of the church, and for other expenses in this case?" RESOLUTION. – The Sacred Congregation, having knowledge of the case on December 18, 1863, confirmed the Archbishop's opinion, but with the provision that there would not be an absolute division, but rather the establishment of a perpetual vicar, responding: To I, negatively regarding the first part, and affirmatively regarding the second part, according to the Archbishop's opinion. To II, affirmatively in all respects, according to the Archbishop's opinion. PROCEEDING OF THE CASE. – The people of the parish of B, considering themselves burdened by such a resolution, again requested a new hearing, stating that the parish of B had never been a vicariate, but a true parish; that the vicariate was the cause of the disputes due to pecuniary...

[*Latin ed. p. 545*]

DIVISION OF A PARISH. 545 reasons which the circumstances indicated. Furthermore, it was demanded that the division of revenues be equal between both parishes, and that a suitable vicar be appointed in each, with certain considerations added to ensure stability. The pastor of parish A., in

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his petition to the Sacred Congregation, among other things, stated that it should be the duty of himself and his successors to nominate the vicar, a right which could not be taken away; that a suitable vicar should be assigned to the parish, and if one could not be found, the people should provide one, especially since there was sufficient means to provide for a suitable vicar, namely, the sum of 50 Roman scudi, according to the Constitution *Ad Exsequendam* and the Constitution of Innocent XII, *Apostolici ministerii*, dated May 23, 1723. Giraldi, *Ius Pont.*, p. 2, sect. 2. Therefore, the case was again presented to the Sacred Congregation under the usual formulas for questioning: I. "Whether and how one should depart from the resolution adopted in the first question in this case." II. "Whether and how one should depart" from the resolution adopted in the second question in this case." On June 3, the Sacred Congregation responded: to I and II, it was decided to postpone the matter and to hear the Archbishop regarding the newly presented arguments, and with the intention (1). Therefore, the Archbishop was heard, and he also made known his opinion. Since the prospect of a perpetual vicariate existed, both for the union of parishes, which was established by Leo X, and for the vicar's independence; except for the nomination, the pastor of parish A. could claim no other right for himself, nor did the complaints brought by the people regarding the vicar's compensation appear to be reasonable, the Sacred Congregation decided on July 5, 1865, to respond to I and II in the affirmative. From the COLLEGES: I. That one should not proceed to the division of parishes unless, after hearing all those who have a legitimate interest, a legitimate reason is known. II. That, however, the complaints of these individuals should be disregarded if they are found to be unreasonable. (i) The intention of the Sacred Congregation was that the Archbishop should report specifically on the difficulties that have arisen in parish A, volume I, part IX, regarding the stipend and the vicar's compensation, and should add his opinion, nomi-2S.

[*Latin ed. p. 546*]

548 ñ l. (Minutes of the Sacred Congregation of Rites. PROCEEDINGS CONCERNING THE CANONIZATION OF THE BLESSED JOHN BERCHMANS, SCHOLAR OF THE SOCIETY OF JESUS. DECREE.) "On the present day, the Reverend Father Joseph Boero, Priest, Professed of the Society of Jesus, Postulator of the cause of the aforementioned Blessed John Berchmans, being present, and the Most Eminent and Reverend Lord Cardinal Charles De Reisach, Relator of this cause, having convened the Ordinary Sessions of the Sacred Rites, the following question was proposed: Whether a Commission for the Re-examination of the cause should be appointed, and for what purpose? The Most Eminent and Reverend Fathers, entrusted with the safeguarding of the sacred rites, having carefully considered all matters, decided to respond: Affirmative,

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that is to say, that the Commission should be appointed, if it should please the Most Holy [Pope]. March 3, 1866. "Having faithfully reported all of the above to the undersigned Secretary of the Sacred Congregation, His Holiness, considering the judgment of the Sacred Congregation to be valid, deigned to sign the Commission for the Re-examination of the Cause of the Blessed John Berchmans, Confessor, with His own hand. On the 8th day of the same month and year." Place: [Signature] CEPISC. PORTUEN. AND S. RUFINAE CARD. PATRIZI, SECRETARY OF THE HOLY ROMAN CHURCH. D. Bartolini, SECRETARY OF THE HOLY ROMAN CHURCH.

[*Latin ed. p. 547*]

ROME. December 23, 1862. "Since neither the Rubrics nor the Missal, nor the Ritual, determine the number of genuflections that a priest must make when returning to the altar with the Most Holy Sacrament after distributing the sacred Communion to the faithful, and after having been consulted on the matter, one of the masters of ceremonies, having carefully examined the question, judged that, in this case, the rule should be derived from the Rubrics that determine a double genuflection before the priest administers the Communion itself, namely, the first before he takes the pyx from the tabernacle, and the second after he has opened it over the altar. For, when it is a question of the due worship of the Most Holy Eucharist, it is certainly fitting that this worship should be rendered by the priest in the same manner when returning to the altar, namely, by genuflecting first before opening the pyx, and again after having placed it back in the tabernacle, before closing the door of the tabernacle. This opinion, when presented by the undersigned secretary of the Sacred Congregation of Rites, in the aforementioned plenary session of the Sacred Congregation of Rites, held on the designated day at the Vatican, was considered by the Most Eminent and Reverend Fathers entrusted with safeguarding the sacred rites, and they judged it proper, or, according to their vote. Masters of ceremonies – and therefore they decreed that the priest, returning to the altar after the Communion of the faithful, must genuflect before opening the sacred pyx, and again genuflect before placing the pyx back in the tabernacle, and before closing the door of the tabernacle. And this must be observed everywhere. December 23, 1862." The entire consultation. Among several priests who came to the city from all parts of the world on the occasion of the solemn canonization of the Japanese martyrs, a question had arisen concerning the number of genuflections that a priest must make when, holding the sacred pyx in his hands, he returns to the altar after the Communion of the faithful.

[*Latin ed. p. 548*]

ROMANA. Wherefore, the Reverend Masters heard [the opinion] of [a] Consultor, who briefly expressed his thoughts as follows: The rubrics of

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the Missal and the Ritual scarcely, or indeed not at all, mention this matter; rather, certain words seem to suggest grounds for doubt, for these words are found in the Missal, chapter XL, number 6, under the title "Rites for Celebrating Mass": "If there are those to be communicated [receiving Holy Communion] in the Mass, the Priest, after receiving the blood, before purifying himself, makes a genuflection, and places the consecrated particles in the pyx, or if few are to be communicated, upon the paten, unless they have been placed from the beginning in the pyx, or in another chalice; then the minister makes a confession, saying, 'Confiteor Deo, etc.'" Then the Priest again makes a genuflection, and, with hands joined, turning himself towards the people on the side of the Gospel, says, "Misereatur..." Afterwards, genuflecting, he receives with his left hand the pyx, etc. After all have been communicated, he returns to the altar, saying nothing; and he does not give the blessing, because he will give it at the end of the Mass." In the Roman Ritual, in the title "Order for Distributing Holy Communion," it is written: "The Priest proceeds to the altar... making a genuflection first and then afterwards, he takes out the pyx, and, having uncovered it, places it upon the corporal (and proceeds with the rites of Communion). When all have been communicated, the Priest, returning to the altar, may say: 'O sacrum convivium, etc.' Before replacing the Sacrament, he should carefully see to it that, if any fragment has adhered to his fingers..." Afterwards, genuflecting, he replaces it in the tabernacle and locks it." Therefore, the Consultor continued, the rubrics do not explicitly mention the genuflections to be made by the Priest when returning to the altar after the faithful have received Communion. Nevertheless, it is beyond doubt that they accurately prescribe the genuflections that precede said Communion, the first of which takes place immediately after the tabernacle has been opened, before the pyx is taken out, and the second before the Priest, having uncovered the pyx, turns himself towards the people, in order to say: "Misereatur vestri, etc." It is equally beyond doubt that the indicated genuflections are directed towards the worship and veneration due to the Most Holy Sacrament, and that the rubrics are harmoniously consistent when dealing with the same action.

(1) Cl. Consultor, Pius Martiucci.

[*Latin ed. p. 549*]

In Rome, in the year 1544. Since the rubrics scarcely mention, or perhaps do not mention at all, the genuflections that the priest should make upon returning to the altar after the Communion of the faithful, considering the analogy of these same rubrics, and the due reverence owed to the Most Holy Eucharist, these same genuflections should be repeated, for the same reason that they were performed before the Communion of the faithful. Therefore, the priest, upon returning to the altar and placing the pyx on the altar, ought to make a genuflection, and should repeat it before putting

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the same [Eucharist] away in the pyx within the tabernacle, before closing the door of the same [sacristy]. This is also prescribed by older and more recent writers who treat of the sacred ceremonies, who have interpreted the rubrics in the manner stated, as can be seen in Merati in the notes to Gavanti, Cavalieri, Quarti, Le Brun, Tonelli, Laboranti, and among the most recent, Rosmée, Herdt, Favrel, Montbache, and Hoeflinger.

FROM THE CONGREGATION OF THE CAPUCHIN ORDER. August 11, 1862, and August 29, 1864. The General Procurator of the Order, after deliberations held on August 11, 1862, proposed to the Holy Congregation for Indulgences and Sacred Relics that the following two doubts be presented for consideration:

I. "Whether, in order to gain the Indulgences granted by the Holy Pontiffs, as reported by Ferraris, *verb. Indulg.*, art. 5, n. 10, and *in eos* who recite the Crown of seven Joys of the Blessed Virgin Mary, consisting of 33 *Ave Maria* and 8 *Pater noster*, or the Crown of Our Lord Jesus Christ..."

[*Latin ed. p. 550*]

550 OF THE ORDER OF MINOR CANONS. "It is necessary that the aforementioned Rosaries be blessed in the Church according to the usual manner, reciting the Our Father and the Hail Mary." "And this is affirmed." II. "Do all priests of the Order of the Brothers Minor of Saint Francis have the faculty of blessing these Rosaries, or does such a faculty belong only to the Superiors of that Order, who may grant it to any priests they choose?" The Holy Congregation, after hearing two consultants, issued a resolution on August 18, 1862, stating: "The matter has been considered, and I will write again." Therefore, two other consultants were heard (1). Thus, of the four opinions presented, the following discussion is arranged. A summary of the discussion. Since the initial question presupposes the genuineness of the plenary indulgence for each of the two Rosaries mentioned, it was necessary to inquire initially whether there was any evidence of the existence of this indulgence. WHAT APPEARED TO OBSTRUCT THE GENUINENESS: It is well known that all indulgences granted to religious orders were generally revoked by Paul V in 1606, and therefore also those granted for the Rosary of the Seven Joys of the Blessed Virgin Mary, and the other of the Lord Jesus Christ. Although, subsequently, the same Pope granted certain indulgences to these religious orders, at the same time he published a certain catalog in which no indulgences are found for the aforementioned Rosaries. Although P. Ferraris in *Bibliotheca Canonica*, loc. cit., and other authors mention a certain new concession by the same Pope on June 8, 1608, at the request of P. Ludovici, a commissary from beyond the Alps of the Order of Saint John; however, no authentic document of this new concession could be found, although an inquiry was made about this document in the Archive of Briefs. Specifically, with regard to the Rosary of the Lord Jesus Christ, there is no author who mentions it. Neither does one exist (1).

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(1) Brother Angelus Savini, Procurator General of the Carmelite Order. After P. Frigidiani, Procurator General of the Order of the Brothers Minor.

[*Latin ed. p. 551*]

It is argued that this is merely a negative argument, which lacks the power of proof; however, it is equivalent to a positive argument, if we consider that Lawrence of Porteii, a Franciscan theologian, in his published work of 1634, entitled "Dubia Regularia," when speaking of the indulgences of his Order, says nothing about this particular indulgence. Nor does Father Angelus of Lantusca, in his "Thealro Regidarium," where he endeavored to present a summary of the indulgences for his confreres, mention it. Furthermore, the reasoning that some advance, that this indulgence was not revoked, because it was directly granted for the souls in Purgatory, is futile. Moreover, the authors cited by Ferraris seem to make mention not of this second indulgence, but of the first. Furthermore, this indulgence must not be confused with that of the same name, which is enjoyed by the Monks and Hermits of Camaldoli, as appears from Clement V's Constitution "De salutis gregis" of July 20, 1674. THESE SEVEN POINTS SUPPORT THE AFFIRMATIVE RESPONSE TO THE FIRST QUESTION, NAMELY, THAT THE AUTHENTICITY OF THE INDULGENCE IS ESTABLISHED. — Assuming, for the sake of argument, the existence of both indulgences, since the three instances of the granting of indulgences were unknown due to the lack of an authentic document, it might have been inferred the necessity of blessing the crowns based on similar examples. Indeed, Benedict XIII in his Constitution of April 13, 1726, for granting indulgences for the Most Holy Rosary, prescribed that the Rosary itself should be blessed by the Friars of the Order of Preachers. Likewise, in his Constitution "Redemptoris" of September 26, 1724, for granting indulgences for the Crown of Seven Sorrows of the B.V.M., he decreed: "Furthermore, we declare that only the Superiors of the Convents, or the Religious of the aforementioned Order, who have been specially appointed by them, shall have the faculty of blessing such crowns." Similarly, Clement XI in his Constitution "De salute gregis" of September 22, 1714, for the Crown of St. Birgitta, he decreed: "Furthermore, we declare that only the Superiors of the monasteries, or the Religious of the aforementioned Order, who have been appointed by them, etc., shall have the faculty of blessing." Having considered these examples, one might have inferred the necessity of blessing the crowns in question, or at least a further investigation should have been made into some ancient document or legitimate custom, which would demonstrate that this blessing was not necessary, thus completely refuting the second doubtful proposition. THESE SEVEN POINTS SUPPORT THE AUTHENTICITY OF THE CROWN OF SORROWS INDULGENCE. — But contrary to the

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weight of these arguments...

[*Latin ed. p. 552*]

55. OF THE ORDER OF CAPUCHIN FRIARS. While some objections were raised, others of much greater weight were presented. It was argued that there could be no doubt concerning the new concession of an indulgence for the recitation of the Rosary of the Blessed Virgin Mary. Several ancient authors mention it. Indeed, Lawrence of Por teiiis, in the aforementioned place, page 262, recounts that he had seen printed testimonials in which, notwithstanding the general revocation, Pope Paul V had granted this indulgence anew. The same is recounted by Angelus a Lantusca, in the aforementioned place, who further adds that he had seen a printed document dated in the year 1609, from the printing house of the royal chamber, and that this concession had been renewed by the oracle of living voice. Also, Peter Passerini, in his *Tractatus de Indulgentiis*, question 108, number 884, mentions it. These should be added to two documents from the Sacred Congregation of Indulgences which corroborate the same. On July 20, 1841, a summary of the indulgences of the Order of the Seraphim was approved, at the request of the nuns of Saint Sylvester in Capite, in which mention is made of this indulgence for those reciting the aforementioned Rosary. Similar things are read in the list of indulgences of the Confraternity of the Sacred Wounds of Ross, which was approved on February 8, 1854. Furthermore, if still more weight of authority were required, letters were presented in the form of a Brief from Innocent XI, dated May 16, 1688, beginning with the words "Exponi nobis," in which, after enumerating several letters from his predecessors in favor of the Brothers of the Holy Cord of Saint Francis, and the Brothers of the Third Order of Penance, the Pope continues as follows: "among other things... are granted various privileges... and indulgences, especially for the recitation of the Rosary of the Blessed Virgin Mary, granted by the aforementioned Pope Paul V on June 8, 1608... and also granted and renewed by Us, through the aforementioned letters, on the days of June 28 and September 5." Furthermore, a document was presented from which it could be ascertained what Pope Paul V had granted on June 8, in the year 1608. Indeed, in volume II, page 98 of the *Registrum Ultramontanae curiae Minorum*, which is preserved in the Ara Coeli convent, it is read that Don Gastonius de Moneada, Marquis of Aytoma, testified that Pope Paul V, on June 8, 1608, had granted a plenary indulgence to those brothers who recited the Rosary of the Blessed Virgin, consisting of 72 Hail Marys and 7 Our Fathers, adding one Our Father and one Hail Mary for the Pope's Holiness.

WHAT WAS PRESENTED TO REFUTE THE NECESSITY OF BLESSING THE SAID ROSARY. — It was demonstrated that an indulgence existed for

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the Rosary.

[*Latin ed. p. 553*]

OF THE ORDER OF CAPUCHINS. 553. It was held that the seven Joys [of Mary] constituted a sufficient reason to dispense with the blessing, and it was argued that the indulgence pertaining to it was purely personal, not attached to a physical crown, but rather to the recitation of the prayers for which the crown was instituted. It was said that the Most Blessed Virgin had not recommended anything other than the recitation of 70 Hail Marys with 7 Our Fathers to a certain novice who appeared to her, by which means he could offer the Virgin a crown more pleasing than one made of flowers. Therefore, not a word was said about a crown made of beads. Indeed, Leo X, in a Brief dated September 14, 1517, mentions, in precisely these words, crowns of the seven Joys of the B.V.M., as well as crowns of the names of Jesus and Mary. Just as these crowns consist solely in the recitation of certain psalms, so too does the crown of which we speak consist solely in prescribed prayers. Moreover, since Leo X, Paul V, and Innocent XI make no mention of a material crown, and no custom has ever existed in the Seraphic Order of blessing a material crown that might be used, the following distinction was observed: the crowns that have touched holy places, and those that are called Jerusalem crowns, and which are commonly used by the Brothers Minor for the recitation of the seven Joys, indeed have many indulgences attached to them, which should not be confused with this plenary indulgence of which we speak; furthermore, these are distinguished from each other also because only members of the Franciscan families can gain the indulgences associated with the former, while, on the contrary, all the faithful can gain them, according to the Constitution of Innocent XI, *Unigenitus*, dated January 2, 1688. Only a few things were noted about the crown of the Lord, consisting of 33 Our Fathers and as many Hail Marys. This crown either pertains to the Camaldolese Order and, therefore, must be blessed, as is stated in a work published in Rome in 1837, entitled *Raccolta di Orazioni ecc. con indulgenze* [Collection of Prayers, etc., with Indulgences]; or, as is gathered from Julius II and Leo X, in Rodericus, *Collect. Privileg.*, vol. 1, page 273, no. 14, page 291-92, this same crown is attributed to the Order of the Minorites, and, as Ferraris states in the aforementioned passage, it was established after the revocation [of a previous rule]; and, for the same reasons mentioned above, it will not be blessed. Therefore, after the question was raised again in the meetings held on August 29, 1864, the Sacred Congregation ordered that the doubts be clarified with the following reasoning.

[*Latin ed. p. 554*]

554. CONCERNING THE CAPUCHIN ORDER. I. "Whether the Crown of the Seven Joys of the Blessed Virgin Mary, bestowed upon those in the

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Seraphic Order, is granted a plenary Indulgence." II. "Whether it is necessary, in order to obtain the effect of said Indulgence, that the aforementioned Crown be blessed."

RESOLUTION. – It was the opinion of the Sacred Congregation to respond as follows on the same day: To I, Affirmative. To II, Negative.

CONCLUSIONS: I. The Sacred Congregation appeared to have judged that there exists an Indulgence for the Crown of the Seven Joys; conversely, it appeared not to have judged that there is a renewed grant of an Indulgence for the Crown of Our Lord Jesus Christ, which is proper to the Franciscan Order. II. When the true existence of some ancient Indulgence is questioned, it is not easily possible to give credence to one author or another who mentions it, unless suitable proof is presented, which removes all doubt.

FROM GALLIA (France). On February 29, 1854. Several Vicars General in Gallia humbly presented a doubt to the Sacred Congregation of Indulgences, as follows:

"It is clear from several recent Decrees of the Sacred Congregation of Indulgences concerning the blessing of crosses, crowns, etc., with the application of the Indulgences which the Supreme Pontiff is accustomed to grant, particularly from the Decrees of April 11, 1840, January 7, 1848, and January 23, 1848, that neither the recitation of any formula, nor the sprinkling with blessed water, nor any other rite is required, except the sign of the Cross, if it is stated in the Indult: 'In forma Ecclesiae consueta' (in the usual form of the Church), and therefore, a priest who has the faculty from the Supreme Pontiff to bless crosses, crowns, etc., can bless them with only the sign of the Cross and apply the Indulgences, and this is valid."

[*Latin ed. p. 555*]

"Concerning the Gallican rites. 555. "Since the aforementioned Decrees specifically speak of blessings accompanied by the granting of Apostolic indulgences, the question arises whether these declarations also include the blessing with the granting of indulgences of the Rosary of St. Dominic and the Crown of the Seven Sorrows of the Most Holy Virgin, which are customarily bestowed by the Fathers of the Order of Preachers and the Order of Servants of Mary, so that Priests, who, either directly from the Supreme Pontiff or from the Generals Superiors of the aforementioned Orders, have been granted, by Apostolic authority, the faculty to bless the Rosaries of St. Dominic and the Crowns of the Seven Sorrows of the B.V.M., may be able to accomplish this solely by making the Sign of the Cross, and whether, for the validity of the act, the formula of blessing must always be used, along with the sprinkling with blessed water. "Although this latter opinion seems less probable, since the Decrees of the Holy Congregation of Indulgences are entirely general and make no distinction or exception, nevertheless, for greater security, it is most earnestly desired that the Holy

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Congregation of Indulgences would deign to resolve this doubt, and in the case where the formula must be used, that it grant a dispensation from the obligation of using it, for both the blessing and the granting of indulgences, so that the same reasons may apply to both." The opinion of the Consultor, summarized. The Consultor noted that, although it is best for the rites of the Church to be observed in blessings, and that its words and formulas instituted by the same Church should be followed, and that the things to which the blessing is given should be sprinkled with holy water, especially before a multitude of the faithful; nor should one rashly depart from the praiseworthy practice of the Church: nevertheless, there sometimes occur cases in which a Priest, endowed by the Apostolic See with faculties, either directly or indirectly, must grant indulgences for the Crowns presented to him for blessing, and he does not have the formula of blessing at hand. In these cases, the Consultor believed that the blessing could validly and licitly be conferred by the Priest solely by making the Sign of the Cross, without reciting any formula. For the validity of the act, the blessing itself seems sufficient. Moreover, such a view appeared to be in conformity with other responses issued by the Holy Congregation."

[*Latin ed. p. 556*]

OF THE GALLIC REGION. The general vicar of the Bishop of Saint-Brieuc, who had obtained the faculty of blessing crosses, sacred medals, and prayerful crowns with the application of indulgences (1), proposed four questions to the Sacred Congregation of Indulgences, of which three are as follows: II. "Does the clause 'in forma Ecclesiae consueta' exist in the Indult? Does it suffice to form the sign of the cross with the hand over the objects to be blessed, without pronouncing the words of the formula of blessing, and without sprinkling with blessed water?" III. "If a formula of words is necessary, is any formula sufficient, provided it is approved by the Ordinary; or must the formula of the Roman Ritual be used?" IV. "When the Indult does not contain the clause 'in forma Ecclesiae consueta,' is it sufficient to form the sign of the cross with the hand over the objects to be blessed?" The Sacred Congregation, on January 7, 1843, decided to respond as follows: to II, affirmatively. To III and IV, the response is the same as in the second question. The same question was proposed three years earlier in these words: "Is another rite necessary, besides the sign of the cross made by the priest who has received this faculty, for applying indulgences to crosses, rosaries, etc.?" And the Sacred Congregation, on April 11, 1840, responded negatively. It seemed to us that such resolutions could be extended to the blessing, with the application of indulgences, of the Rosary of Saint Dominic and the Crown of the Seven Sorrows of the Most Holy Virgin, which are usually distributed by the Fathers of the Order of Preachers and the Order of Servants of Mary, because the matter concerns a favorable disposition, and, on the contrary, this faculty granted to a

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priest, such as a missionary, would be rendered useless in missions, due to the lack of a book containing the formula of blessing. RESOLUTION. The Sacred Congregation for Indulgences and Sacred Relics, after discussion on February 29, 1864, decided that a different judgment was necessary, responding: Regarding the crowns of the Rosary and the Seven Sorrows of the Most Holy Virgin, it is necessary to observe the formula, since the responses of the Sacred Congregation of April 11, 1840, and January 7, 1843, do not include the cases in question in prayers. As for a dispensation, it is not necessary. FROM THE COLLECTIONS: I. In crowns and other objects of piety to be blessed, the customary form of the Church substantially consists in the sign of the cross (1). See Appendix XXI.

[*Latin ed. p. 557*]

OF THE GAULS. §57 Concerning these matters, it is to be determined by him who possesses the faculty of granting indulgences. II. However, that customary form of blessing is not sufficient for that purpose, when a particular form is prescribed. III. And that form must be observed, whether the Priest obtains the faculty of blessing from the Roman Pontiff, or from one who possesses the power of blessing by ordinary right, even if no mention is made of the form to be followed in the blessing. IV. The law enacted is not considered to be derogated from, unless it is proven. And those who succeed to the rights of another, must use those rights, in the same manner as he who preceded them used them. Reg. iuris 46 in 6. IX. On the 10th of December, APOSTOLIC PENITENTIARY. 1860. "The Sacred Penitentiary, knowing that many pastors of souls are, due to the present circumstances, greatly troubled in many instances as to how they may prudently assist the flock entrusted to them, or what they may prescribe or prohibit, has considered it opportune to communicate to certain Local Ordinaries certain responses, which have been given by the Sacred Penitentiary in answer to doubts that have long been raised, so that they may have before their eyes one and the same rule of doctrine in instructing the flock entrusted to them, especially in these times, in which the most bitter enemies, and degenerate sons, wage a most bitter war against the Church, their Mother, and strive with all diligence to sow tares in the field of the Lord. This, in part, the Sacred Penitentiary has already accomplished through letters sent to the Local Ordinaries on the 6th of October last, in which, besides the particular faculties for advising..."

[*Latin ed. p. 558*]

558 SACRED PENITENTIARY APOTOLICAL. In order to meet the needs of the faithful, and because these Letters contained several resolutions concerning doubts, it also seemed opportune to transmit anew, by means of the present Letters, the same responses, some of which, having regard to particular circumstances, were moderated by the Oracle of the

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Most Holy, while others were expanded, and to add further matters which have arisen subsequently. The following are the doubts and responses. (*) 1. Is it permissible to sing the hymn *Te Deum* on the occasion of the proclamation of an usurped government, or on a similar event? R. No. 2. Is it permissible to recite the Collect for the King in the Mass and other sacred functions, when it is ordered by an invading government? R. No. 3. Is it permissible to participate in a religious function ordered by the laws of the Subalpine region on the anniversary of the Statute? R. No. (*) It is not unknown that some Catholic writers seem to deviate in their writings from the reasoning of the Apostolic See concerning the matter discussed in such doubts and responses; therefore, we have considered it useful to further disseminate these responses, so that, after careful reading, it will immediately become clear what is the mind of the Holy See, from which it is forbidden for a wise man to deviate. Especially since there is not lacking one or another writer who has taught something that is directly opposed to these responses, and who has attempted to confirm the cavils, which we will explain in their proper place. (i) In the notes, we place the text in italics, which we translate into Latin according to the rules of our publications. « Whether it is permissible to sing the *Te Deum* on the occasion of the proclamation of the usurped government, or on another similar circumstance. » (2) « Whether it is permissible to recite the Collect for the King in the Mass and in the other sacred functions, should it be ordered by an invading government. » (3) « Whether it is permissible to take part in the religious function ordered by the laws of the Subalpine region on the anniversary of the Statute. »

[*Latin ed. p. 559*]

S. POENITENTIARIA APOSTOLICA. 550

4. Quæstio: Estne licitum ut quis propriam domum luce externa ornet occasione inaugurationis novi Gubernii, aut alio simili eventu; item, estne licitum uti insignibus novi Gubernii, talibus ut coccardae, vittae tricolores, et alia id genus?

Responsum: Negative, dummodo non immineant gravia damna et absit scandalum.

5. Quæstio: Potestne Clerus gubernativas Autoritates ad Ecclesiasticas functiones invitare? Et si forte nec invitatae intersint, potestne Clerus illis honoris actus, Coeremoniali praescriptos, tribuere?

Responsum: Negative: et quatenus non invitati interveniant, Clerus passive se habeat; hoc est, abstineat ab actibus honorificis in Coeremoniali praescriptis.

6. Quæstio: Possuntne Magistratus Municipales in Ecclesia recipi, et illis honoris actus, ut supra, tribui?

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Responsum: Affirmative, dummodo tamen Magistratus non peregerint actus reprobatus per litteras Apostolicas diei 26 Martii 1860; secus, ut in praecedenti.

7. Quæstio: Estne licitum Civicae aut Nationali militiae nomen dare, quæ ab intruso Gubernio suae defensioni ac conservationi in Provinciis usurpatis est constituta?

Responsum: Negative.

8. Quæstio: Quid de iis dicendum est, qui inviti conscribuntur, et ad eamdem militiam ineundam adiguntur?

Responsum: Possunt tolerari milites cívicos coacti, qui militiam absque gravi damno seu incommodo deserere nequeunt, dummodo tamen animo parati sint eam deserere quam primum poterunt, et interim...

[*Latin ed. p. 560*]

SACRED PENITENTIARY APOTOLICAL OFFICE. Concerning all acts of hostility against subjects and soldiers of the legitimate Principality, and against ecclesiastical goods and persons.

9. Is it permissible for parish priests to provide lists to the intruding government for the National Guard and for military conscription in the usurped provinces? (9) R. No; and to the extent that these lists are taken by force, they must passively submit.

10. Is it permissible to give votes to elect municipal councils and representatives? And can those elected hold the office of councilor and municipal magistrate? (10) R. Provided that the municipalities are not compelled to do things contrary to Divine and ecclesiastical laws, and provided that they abstain from taking the oath according to the form proposed by the intruding government, it can be tolerated.

11. Is it permissible to participate in magistracies, and to accept offices offered by a community, or even by the government, if those who accept them abstain from showing adherence to the intruding government, and from all acts that tend to ratify it? (11) R. Affirmative, provided that there is no scandal, and subject to the conditions stated in the question; especially, that in their words they must be entirely in conformity with Catholic doctrine.

12. According to the Indult already sent to the local administrators of the pious places occupied by the intruding government, can those who are re-elected by the illegitimate authority be habilitated by the Ordinaries, not only to continue the administration, but also to accept it? (12) R. The Sacred Penitentiary, by special and express Apostolic authority, to all and each of the local Ordinaries, whose territories...

[*Latin ed. p. 561*]

SACRUM CONCILIUM POENITENTIARIUM APOSTOLICUM. 561.

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Gubernis invasore occupatis, conceditur facultas, ad sex menses durantem, praefatis personis, ut officium Administratoris, dummodo exinde non requiratur adhaesio Gubernio invasori, aut iuramentum fidelitatis iuxta formam ab eodem Gubernio praepositam et ad effectum, et sub conditione curandi utilitatem "Locorum Piorum," et abstinendi omnino ab alienatione bonorum, et, cum dependentiā ab Episcopo, seu ab Ordinario Loci, cui rationem reddere teneantur, retinere, et de novo assumere et exercere licite valeant, Apostolica expressa auctoritate Indulgendi. Praeterea, quilibet scelus removere caute manifestet se id peragere de Licentia Apostolica. Episcopi vero et Ordinarii in Administratione Locorum Piorum passive se habeant, nullumque positivae conniventiae argumentum quoad Gubernium exhibeant, et eidem dumtaxat, si fuerint interrogati respondeant. 13. An retineri et suscipi possint sub intruso Gubernio officia? Dummodo non agatur de officiis, quae directe et proxime influunt in spolium, vel in eiusdem spolii manutentionem, et exerceri possint absque periculo laesionis Legum Divinarum et Ecclesiasticarum posse tolerari; in praxi vero quilibet ex dictis officiis aut personis Ditionis Pontificiae, qui paratus sit stare mandatis S. Sedis, caute moneatur, ut consulat Episcopum seu Loci Ordinarium, qui in singulis casibus decernet iuxta mentem SSm. Domini. 14. An liceat iuramentum ab intruso Gubernio propositum hisce vel similibus verbis, quibus illimitata obedientia continet: « Iuro fidelitatem et obedientiam Victorio Emmanueli Italiae regi, eiusque successoribus. Iuro me Statutum, omnemque aliam status legem pro inseparabili et regis et patriae Italiae bono observaturum? » Iuramentum, prout exponitur, non licere; tolerari autem posse iuramentum obedientiae mere passivae in iis omnibus, quae (13) "possono ritenersi, e assunersi gli impieghi sotto il Governo intruso." (14) "Se lecito il giuramento proposto dal Governo intruso nei seguenti termini, od altri consimili che comprendono una ubbidienza illimitata: - Giuro fedeltà ed ubbidienza a Vittorio Emmanuele re d'Italia, e suoi successori. - Giuro di osservare lo Statuto, ed ogni altra legge dello stato pel bene inseparabile del re, e della patria Italia."

[*Latin ed. p. 562*]

562. SACRED PENITENTIARY APOTOSTOLIC OFFICE. These laws, both Divine and ecclesiastical, do not conflict, according to the form approved by the Most Holy Pope Pius VII, and expressed in these words: "I promise and I swear that I will never engage in any conspiracy, assembly, or sedition against the established government; and also that I will be subject and obedient in all things that do not contradict the laws of God or the Church."

15. How should Ordinary pastors act concerning the *Regium Placet* and *Exequatur*, in matters pertaining to the authority claimed by the government over Pontifical Bulls, Briefs, and Rescripts?

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R. They should not cause private individuals to be troubled who, in order to protect themselves, appeal to the government concerning the *Regium Placet* or *Exequatur*. Rather, the Ordinary should, as much as possible, remain passive in this matter, and if questioned by the government regarding such petitions, they should express their opinion, according to the laws of justice and in accordance with the Holy Canons.

16. May Ordinary pastors, parish priests, beneficiaries, and other administrators of ecclesiastical goods, if they are threatened with severe penalties, deliver an inventory of the respective revenues to the government?

R. It is permitted, provided that a written protestation is issued in each instance by the respective administrators, regarding the necessity of this delivery, in order to avoid greater evils and to protect the rights of the Church. It is the will of the Most Holy Lord that the Ordinary, before or after the delivery, if it is possible, should make a collective protestation on these matters, reverently indeed, but with evangelical freedom.

17. How should Ordinary pastors act concerning a priest who, having fallen under censures, neglects to reconcile himself with the Church, and who cannot be declared suspended from Divine Office by the Ordinary, for fear of grave scandals and inconveniences?

[*Latin ed. p. 563*]

Apostolic Penitentiary. 568. The priest must, to the best of his ability, ensure the repentance of those subject to ecclesiastical censures, as befits a good and prudent pastor; and if he does not heed the voice of the Ordinary, recourse must be had to the Congregation of the Holy Council. 18. How the parish priest should act in the celebration of marriages of those who are manifestly subject to ecclesiastical censures. It must be ensured, to the best of the priest's ability, that those subject to ecclesiastical censures are properly reconciled with the Church; but if they refuse reconciliation, and if the marriage is celebrated, grave harm seems to ensue. The parish priest should consult the Ordinary, who, having considered the circumstances and all that has been handed down by approved authors, especially by St. Alphonsus (Lib. 6, Tract. I, Cap. 2, n. 54), should declare what he judges to be most expedient in the Lord, always excluding the celebration of the Mass. 19. Likewise, how bishops and parish priests should act if someone subject to the aforementioned censures were to present himself to act as godfather in the Sacrament of Confirmation, or of Baptism, without having first been properly reconciled with the Church. As in the preceding. 20. Can the Most Holy Eucharist be administered to those manifestly subject to ecclesiastical censures, unless they have first, as is fitting, been reconciled with the Church? JR. Negatively. 21. If someone subject to ecclesiastical censures were to die, and according to the Sacred Canons, and the rules on this matter handed down by Doctors, he should absolutely be deprived of ecclesiastical burial, and on the other hand, if the funeral rites and the

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very ecclesiastical burial were demanded with grave threats, how should the parish priest act in such a circumstance? (IS) "How should the parish priests act in the celebration of marriages of those who are manifestly subject to ecclesiastical censures?" (19) "How likewise should bishops and parish priests act if someone of those censured were to present himself to act as godfather in the Sacrament of Confirmation, or of Baptism, without having first been properly reconciled with the Church." (21) "If someone of those mentioned who are manifestly subject to ecclesiastical censures were to die, and according to the Sacred Canons, and the rules assigned on this matter by Doctors, he should absolutely be deprived of ecclesiastical burial, and on the other hand, if the funeral rites and the very ecclesiastical burial were demanded with grave threats, how should the parish priest act in such a circumstance?"

[*Latin ed. p. 564*]

564. ON THE APOSTOLIC PENITENTIARY. Q. Is it necessary to ensure that everything is done according to the norms of the Sacred Canons? A. Indeed, and since this cannot be achieved without the danger of disturbance and scandal, the parish priest, nor any other priest, should in any way participate in funerals or burials.

22. Q. Can a bishop approve of preachers who are offered by the current municipal authorities? A. The bishop can approve of those presented to him, provided that they possess all the necessary qualities.

23. Q. Can tax collectors and bailiffs execute mandates against ecclesiastical institutions and pious foundations that are in arrears with both state and municipal taxes? And under what regulations and precautions? A. By the special and express authority of the Sacred Penitentiary, with the benevolent consent of Our Most Holy Father Pope Pius IX, a six-month period is granted to all and each local ordinaries, whose territories have been occupied by an invading government, to empower, either directly or through another ecclesiastical person specifically appointed by each of these ordinaries, tax collectors and bailiffs to execute mandates against both pious foundations and ecclesiastical persons, provided that prior permission has been obtained in each case from the respective ordinary, and with due prudence to avoid scandal; all contrary provisions notwithstanding.

24. Q. Can parish priests and other clergy, who have suffered damage due to the abolition of tithes by the government, accept compensation offered by the government itself? A. According to the decree of the Holy Father, they can, as a mere compensation for the damage suffered by them from the government due to the impeded collection of tithes, receive pensions assigned by the government, provided that a protest has first been made, either by the local ordinary in general, or by any of the aforemen-

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tioned parish priests or clergy individually.

[*Latin ed. p. 565*]

SACRED PENITENTIARY APOTOLIC OFFICE. 565. In no way should such a perception be recognized or approved. Regarding the abolition of tithes enacted by the Government, debtors of said tithes should be warned that they are not, by law enacted by the Government, obligated to pay said tithes. 25. Can parish priests request subsidies from the Government, which the same Government promises to those parish priests who have a population greater than five hundred souls, and a revenue less than eight hundred francs? (25). R. It is not advisable. 26. Should confessors consider those to have incurred censures who gave their vote for the union of Italy under one king, whether led by fear, or by deceit, or by ignorance; and those who gave a similar vote in other provinces outside the Pontifical States, or who gave a negative vote, or a null vote, or a vote of no significance; and those who illuminated their homes, wore cockades, etc., not led by grave fear, or who, through levity, attended the singing of the hymn Te Deum; and finally, women and minors who signed petitions, carried banners, etc.? (26). Ans. Ecclesiastical censures, according to Apostolic Letters of March 26, 1860, are incurred by those who formally cooperated with, or adhered to, the rebellion against the Pontifical States. Therefore, in order to determine in the forum of conscience whether someone has incurred censures, the conscience of each individual must be examined by the confessor. In practice, sufficient provision has been made through faculties granted to the Ordinary of each place, dated November 16, 1860. 27. Since the public scandal caused by the actions of those seeking absolution from censures must be remedied, (23) «Can parish priests request» from the Government those subsidies, which the same «Government promises to those parish» priests who have a population greater «than five hundred souls, and a revenue» less than eight hundred francs? (26) ct. Should confessors consider «those who have given their vote for the» union of Italy under one king, induced «by fear, by deceit, or by ignorance;» those who gave a similar vote in other «provinces outside the Pontifical State,» or who gave a negative vote, or a null «vote, or a vote of no significance; those» who illuminated their homes, wore «cockades, etc., not induced by grave» fear, or who, through levity, attended «the singing of the Te Deum; finally, the» women and minors who signed «petitions, worked banners, etc.»

[*Latin ed. p. 566*]

I. THE APOSTOLIC PENITENTIARY. Matters arise in which such reparation is difficult and fraught with peril (27). R. Reparation for scandal is, by divine law, necessary, and it must be made in the best way possible, according to the prudent judgment of the Ordinary or Confessor. 28. Whether those who seek absolution ought, before being absolved, to

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make amends for the damages which the Holy See has suffered under the present circumstances (28). R. It suffices that they be prepared to obey the mandates of the Holy See. Given in Rome, in the Holy Penitentiary, on the 10th of December, 1860. (27) "In what manner must reparation be made for the public scandal caused by those who ask to be absolved from the censures incurred in these times, in which such reparation is difficult and perilous?" (28) "Whether those who ask for absolution ought, before being absolved, to submit to the reparation of the damages suffered by the Holy See due to the present upheavals."

[*Latin ed. p. 567*]

567 APPENDIX XIX CONCERNING THE APPEAL OF LAYPERSONS TO A SECULAR TRIBUNAL IN MATTERS. In the case previously explained on page 533, concerning the extinction of a debt, etc., the Congregation of Bishops and Regulars, responding to a doubt, stated: "Regarding the dispensation granted, its power must be understood to pertain to the absolution from the censures, and regarding the irregularity contracted, after reciting penitential psalms, etc. For those who, for either of the two reasons mentioned in the Canon, seem to have fallen into excommunication, namely, on account of presumption in alienating [property], by their own authority, contravening ecclesiastical laws contrary to the disposition of the Constitution *Ambitiosae*; and on account of the appeal to a secular tribunal. However, if, concerning the first cause of the excommunication, some reason can be adduced by which they seem to be able to be excused from said excommunication, although the acts committed are invalid by law (1), they cannot nevertheless be excused on account of the second cause, namely, on account of the appeal to a secular tribunal. The sanction of the Bull *Coena* is clear, in which excommunication, reserved to the Roman Pontiff, is imposed and contracted by those, whether clerics or laypersons, who, rejecting ecclesiastical jurisdiction, bring an ecclesiastical cause before a secular tribunal. The words of this sanction are as follows: "We excommunicate and anathematize... those bishops, other prelates, superiors and inferiors, and all other judges, ecclesiastical ordinaries, who, directly or indirectly... prevent others from using their ecclesiastical jurisdiction, according to what the canons and sacred ecclesiastical constitutions, the decrees of general councils, and especially the Council of Trent, establish, and also those who, avoiding the sentences and decrees of the ecclesiastical courts after the decisions of their ordinaries delegated, or appeal to other courts or to any other secular authority, and from whom prohibitions and penal mandates are issued by the aforementioned ordinaries or delegates."

(1) Cardinal Petrucci, in Constitution V of Paul II, section 4, number 35, states: "Good faith and the utility of the Church excuse the one who acts without consent from censures and penalties imposed, because this Bull

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[Ambitiosae] states that no [alienation] is invalid; and regarding those who alienate, it intended to add the presumption that, if this presumption ceases, the incurring of penalties also ceases, and in the forum of conscience, they do not incur these penalties. Quaranta, in *Summa Bullae*, verb. *aliénât*, number 60, where he excuses probable ignorance of the fact; indeed, ignorance of the law is excused in those who are not experts, or in a law that is very doubtful, and in which there is some discrepancy among Doctors, or the appearance of a just cause, or the existence of that [cause]."

[*Latin ed. p. 568*]

5. C.S. APPENDIX XX. "and, conversely, to execute [punishments] against those who [evade justice]." Borracina, illustrating the text of the Bullae concerning the Coena, in disputation 1, question 7, point 1, number 26, asks, "Who is to be considered as evading the judgment of the ecclesiastical court?" and resolves: "He is to be considered as evading [it], who, without having recourse to the ecclesiastical judgment, flees to secular courts, to the prejudice of the power and jurisdiction of [the ecclesiastical court], against whom the ecclesiastical judge had exercised, or could have exercised, [his authority]." The question among the Doctors is whether it is sufficient to incur this excommunication simply by appealing to secular courts, even if nothing is obtained from the lay judge to whom one appeals, or whether it is necessary that a mandate or prohibition be obtained against the ecclesiastical judges. Some authors do not consider it sufficient, but contend that prohibitions or mandates against the aforementioned judges must be obtained, and that execution must be ordered, as Vivaldus states in *Rerum Ecclesiasticarum Tractatus*, book 10, title 10, concerning excommunication; Filliucius, in question 1, number 284, tract 16; Ugulinus, in verse 2; and also Duardus, in canon 16, question 6, number 3 and following, explain this sanction. The opposite opinion is presented and maintained by Bonacina in the aforementioned place, number 28, with these words: "The second opinion, which seems more probable to me, is that it is sufficient if recourse is had from the ecclesiastical judges to the secular judges, with the intention of seeking help from the secular judges, or mandates, or prohibitions against the ecclesiastical judges, even if these are not subsequently obtained, or if execution is not ordered." This opinion of Bonacina, which the same author corroborates with weighty arguments, also seems to be in accordance with the practice of the SS. Congregation, which do not seem to pay much attention to the outcome itself; but it is sufficient that the ecclesiastical power is declined, and the cause for judgment is referred to a lay tribunal. In these cases, the SS. Congregations, after becoming aware of the cause, often instruct the Orators or litigants to consult their consciences, as is evident from the Casertana Reintegration of August 8, 1863, in the Chapel, in which, after the resolution of the cause, the

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SS. Congregation added: "and that they consult and that the Bishop and others be reminded to take care of their consciences." Francis, and others, sought to reclaim ownership of property of a certain chapel, which they contended was secular, and brought the case to a lay tribunal, and Francis obtained a favorable judgment twice, but without any opposition from the Bishop. In Ariminen, on July 5, 1862, a certain Canon, unwilling to comply with the Bishop's decree concerning the administration of the chapter's property, brought his presumed rights to a lay tribunal, demanding that a judgment be pronounced against the Chapter. Almost immediately, someone began a contestation of the litigation, and the Chapter appealed to the SS. Congregation.

[*Latin ed. p. 569*]

ASSUMPTION: Due to the incompetence of a lay judge, although the Canon 569 XX, especially concerning the matter of grace, seems to be in Canon Inolita q. 1: "inolita presumes itself excused, saying that it has judged according to lay opinion, to such an extent that it has dared to act illicitly, and thus has opened the way for Clerics of Clericum (leaving aside their Pontiff) to appeal to a Procurator who would defend them; for public judgments are handled, and therefore we decree that henceforth it should not be presumed that this will be done in the absence of other means by which the dispute could be legally resolved; otherwise, the assembly and the cause will be lost, and the person will be excommunicated. However, the Holy Congregation added to the resolution of the cause: and the same Canon (!S.) consulted about the recourse to lay power. Also, in canon ibidem, in the decrees, among others, in chapter Decernimus, more severe penalties have been established for such a case. Pope Eugene decreed: "We decree that laymen should not presume to handle ecclesiastical matters, but rather ecclesiastical matters should be handled by Bishops, Abbots, Archbishops, and other ecclesiastical persons (especially those concerning spiritual matters)." In addition to this chapter, he wrote: "A cleric who appeals to lay judges, seeking justice from the officials of the Prince, despises the ecclesiastical authority, and does not obey the sacred canons, the Bull of the Holy Supper, and the Apostolic Constitutions... Moreover, they sentence, exercise justice, and declare excommunication, and similar things are established; and from Innocent VIII, we know that the cleric is excommunicated, and deprived of his benefices." They abhor such a vile recourse, as it is a most shameful violation of the immunity of the Church, which the Church has been adorned with by its divine Author.

APPENDIX XX. WHAT RULES THOSE WHO ARE HEAVILY BURDENED WITH OBLIGATIONS SHOULD OBSERVE, WHEN THEY DOUBT, AND ARE HELD BY LANDS AND GOODS, TO SUPPLY.

It has been debated more than once, whether those who are burdened with obligations, or whose lands and goods are seized, can redeem them

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by a payment, whether it be a perpetual payment or one that consists of a single sum.

[*Latin ed. p. 570*]

APPENDIX XX. The annual contribution is equivalent to the capital; in the first case, however, it is entirely distinct. No canon in the Decrees exempts the heir from this obligation for all time; such a law is not found in Roman law, and certainly not in the second case. A great controversy arises concerning this matter; although, when several laws are present, and when a specific provision has been demonstratively omitted, it is possible to deduce with certainty what should be said. In this canon, the following rule is established to clarify the matter: 6. and 7. The heirs are demonstratively obligated to provide for the legatees.

Doctors commonly discuss this controversy regarding annual contributions. The documents concerning these matters, transmitted by the Sacred Congregation to the Bishops (words from a certain instruction, S.C. Ep. Z. 20 ff.), state: "Annual contributions, whether accumulated or not, are to be considered." Furthermore, St. Benedict XIV, in his Institutiones Eccl., 107, § 6, and in his Decretum, lib. 13, oration 32, states that if, by reading or by a promise, a certain obligation is incurred, it should be fulfilled first, if possible; otherwise, the heir should fulfill the obligation by assigning Masses, and then he should present his declarations to the Sacred Congregation.

Before all else, it must be noted that the argument most frequently cited, and one that is constantly being raised, concerns the reduction of the pious obligations of founders, and the maintenance thereof, so that, as the ordinary sums are deficient, the heirs should, in the future, provide for them. The reason for this is that certain rules have been established regarding such reductions, and the heirs who have begun to provide for the founders should, in turn, be obligated to provide for the legatees. For, demonstratively obligated heirs are concerned with fulfilling the obligation, whether it is assigned to a specific fund or not. Therefore, if a fund has already been assigned, the obligation attached to that fund also lapses.

It must be investigated whether the fund was demonstratively relinquished, or whether it was relinquished in a demonstrative manner. What if one still doubts?

[*Latin ed. p. 571*]

Whether a legacy is demonstrative or a mere bequest must be determined. It is indeed to be held that a demonstrative legacy is intended; for, according to a certain resolution of the Sacred Council of Brixen, cited by Benedict XIV in his work, chapter 33, this rule "applies either when a specific sum of money is bequeathed, or when a specific thing in general is bequeathed, or when a specific thing in species is bequeathed, which remains with the heir who has the burden of providing for the celebration of

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the Mass," or when the thing bequeathed is consigned to the legatee, not by order of the testator, but by his own will, and solely for the purpose of relieving himself from the burden of providing for the celebration of the Mass."

As the Most Reverend Primate adds in his will, which he himself wrote and which the Congregation approved in a certain case from Lucania, proposed on December 16, 1685: "When the testator orders... that so many fruits be consigned, which are sufficient for the said celebration, then it is said to be a legacy of that kind, and the fruits are sufficient in the demonstrative obligation: hence, although the heir may assign goods whose income at the time of assignment is sufficient, nevertheless, if those goods are lost, or reduced to a smaller amount, the heir is bound to supplement from the income of other goods."

The Sacred Council followed this doctrine, both generally and specifically, as can be seen in the Roman Reduction, Missions, 1733, Bruges, March 15, April 18. When the testator commands his heirs to pay a certain and determined sum in Eugubina in 1808, and in 1825, in the case of Affrancation, it is clear.

Nor has the Sacred Rota taught otherwise, nor has it accepted any other doctrine, as we have shown above. Furthermore, Benedict XIV follows this, saying: "If the testator had ordered that so many fruits be given to the legatee, for the celebration of Masses, as would be sufficient for the said celebration, although the heir has delivered stable goods which are deemed sufficient once, he could not refuse to provide a supplement, if, perchance, it should happen that, due to a subsequent diminution of the fruits, or an increase in the tax, the income of the delivered goods is not sufficient to sustain the imposed burden."

On January 1, in Rome, in June 1723, in the Supplement, before Aldo-

[*Latin ed. p. 572*]

The provided text does not contain any quotations from Ezekiel 10:9. Therefore, no changes are required.

§72 APPENDIX XX • » neither concerning the past nor the present. With other legatees, namely, the nuns of a certain monastery, a very important census was involved (in which the entire inheritance was included), a portion of which, namely, the sum of scutage of 100, was pledged as security for all of her goods, so that in this way, they might be freed from all obligation, both during her life and for all future times. However, the economist of this monastery vehemently resisted this arrangement; and when brought to judgment, it was decided that the annual sum of 100, without any taxation, nor even any demonstration of ownership of a particular property, was, in fact, a debt owed to Saint Rotam before Masaniello; but the Holy Order could not otherwise be interpreted, and in the name of the plaintiff, it

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was decided that the nuns should receive the sum of 100 in money, derived from the fruits of all of Fulvia's goods, or from her particular assets, as stated in Text L. Annual §. Almost a century later, before Caprara on January 19, 1702, in a disputed case concerning the constitution of pecuniary matters, according to the common distinction, Text L. Annual, a question was raised: "Whether the monastery was bound by a past obligation, or whether it was bound in the present to receive the assignment until now."

§. Attia, de Leg. 33. explains Paul. De Castro 1611, offered in place of the annual payment of 100 scutage, as stated in Modestinus, the second L. Annual Cons. 4 7, n. 3, lib. 2. "But the Holy See responded: 'Neither, nor if it was left in a general sense without any particular designation, is it to be held that the nuns are bound by a past obligation to receive the assignment.' However, the heirs, arguing that if they were to be held liable for the payment of 100 scutage from one property, they would have to pay it from other properties as well, concluded that the offer to assign the debt was a real offer, and that they were willing to submit to a judicial assignment in order to be freed from the debt; therefore, this argument should not be heard. . . The nuns argued that, once the debt was paid, they would have no further claim, and the Holy See responded in its decision, §. 13, that "it does not matter that Fulvia did not have other assets, but that she had a census with the Duke of Zagaroli, and that even this generous donor could not have obligated the nuns to accept the assignment." All of these things, again and again, were balanced, so that the income from the said census, as stated in L., could not obligate the nuns to accept the assignment. If anyone could have offered a sum of money with other alleged reasons; for whatever is offered, it is understood that it is offered freely.

[*Latin ed. p. 573*]

APPENDIX XX. 573 Concerning the Non-Existence of the Benefit of Others – "The testator, as the laws soon to be cited demonstrate, is in no way justified in alleging a benefit." Therefore, in the case of lands lost, diminished in value, or otherwise impaired, it is not only from the annual declarations of the Most Holy General Council, but also from the decisions of the Sacred Roman Rota, that it is established that the heir is not to be relieved of the obligation to pay, and indeed, in general, no decision is made mentioning goods or effects. Consequently, if the testator has expressly stated that the heir is to be relieved from the obligation to pay from certain lands already determined or specified, this is not to be applied in the opposite sense, nor is the heir to be relieved if the testator has imposed upon the heir the obligation to fulfill the legacy, and if the entire inheritance is burdened with this obligation, and the testator has explicitly or implicitly intended that the heir should satisfy this obligation from the revenues of the goods, or from the heir's own property.

APPENDIX XXI. INDULGENCES WHICH, BY CARRYING PRAYER

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BEADS, CROWNS, (commonly called MEDALS) WITH THE SAID CROSSES, NOW CALLED CRUCIFIXES, ARE GRANTED.

"Both men and women who are faithful Christians, by retaining with them statues of Christ, small crucifixes, etc., will fulfill the IX. BENEDICTION. It is necessary that those who wish to obtain the indulgences granted in the aforementioned Benediction, have with them, or retain with them, something of what is mentioned: Numismata, Crowns, etc.

"Furthermore, His Holiness rejects images, whether printed or painted, as well as crosses, crucifixes, small statues, numismata, etc., which are called Medals, and which, as is stated, must be held or recited, or carried with them, in order to obtain the indulgences.

(*) This list of indulgences ceases with the death of the Holy Roman Pontiffs, and after the election of a new Pontiff, it is again confirmed or renewed.

[*Latin ed. p. 574*]

574 APPENDIX XXI tur. It must be noted that the SANCTITY of the Blessed Virgin Mary, and also that of those images made of iron, should be admitted, even though until now, images of the Nativity of Saint John the Baptist, of the Holy Apostles Peter and Paul, Andrew, James, John, Thomas, Philip, James, Bartholomew, Matthew, Simon, and Jude, not yet canonized, or inscribed in the Martyrology, of Saint Joseph, and of all the Saints, have been prohibited. » Finally, the SANCTITY of the Blessed Virgin Mary and of all the Saints should be represented by images, whether painted by pious hands or otherwise. » For a clearer understanding of the foregoing, a series of Indulgences, which anyone can obtain, and also of pious works accomplished, are listed below, as follows: « Whoever, at least once during each week, obtains the Plenary Indulgence of the Rosary of the Blessed Virgin, or the Indulgence of seven years, or performs the Office of the same Blessed Virgin Mary, or the Office for the Dead, or recites seven penitential Psalms, and as many on any Sunday, or other feast day, or the Gradual, shall obtain an Indulgence of five years, and seven quadragenaries. Whoever, on any other day of the year, performs any of these things, shall obtain an Indulgence of one hundred days. » Whoever, at least once during the week, is accustomed to recite the Rosary, or the Office of the Blessed Virgin, or the Office for the Dead, on the feast days of Our Lord Jesus Christ, namely, on the Vigils, or at least one of the Nocturns, and the Lauds, or seven penitential Psalms with the Litany, and the prayers thereof, shall obtain the Indulgence of the Most Holy Trinity, and of one hundred days. « Whoever, at the hour of death, commendeth his soul to God,

[*Latin ed. p. 575*]

APPENDIX XXJ. 575 And that very death (according to the instructions of the venerable memory of Pope Benedict XIV, who devoutly proclaimed

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in his Constitution *Datum 5 Aprilis Domini Nostri Iesu Christi, terque 1747*, whose beginning is the *Pia Mater*), he who has considered the Passion and Death of our Lord Jesus Christ, will, with a contrite heart, be prepared to recite the *Oremus* (Let us pray), the Angelic Salutation, and the *Salutation* three times.

"Whoever, truly contrite for his sins, confesses them, and, having received Holy Communion, firmly proposes to amend, if he is able, let him invoke the Most Holy Name of Jesus, if he can, with the *Oremus*, and with the Angelic Salutation, devoutly repeating them in honor of the Most Holy Trinity, or out of reverence for the five Wounds of Jesus Christ, and he will obtain a Plenary Indulgence.

"Whoever, before the celebration of Mass, or the reception of the Eucharist, or the recitation of the Divine Office, or the recitation of the Little Salutation of the Blessed Virgin, makes some devout preparation, and prays and recites the *Oremus* at least once, he will gain a certain Indulgence.

"Whoever, for the faithful who are sick and at the point of death, devoutly prays and recites the *Oremus* at least for them, will gain an Indulgence of fifty days each time.

"Whoever visits those who are detained in prison, or the sick in hospitals, and helps them in some good work, and says the *Oremus*, will gain an Indulgence of fifty days.

"All and each of the aforementioned Indulgences, or the teaching of Christian doctrine to children, or to servants, or to the faithful who are dead, can be gained many times, and the Holy See declares that it wishes to apply, through the mode of suffrage, all of these concessions, so that they may remain firm in their strength, according to the concessions granted by our predecessors.

"Whoever, at the ringing of a church bell in the morning or afternoon, or in the evening, says the *Angelus*, the *Salutation* of the Lord, etc., or if he does not know them, he will recite the *Oremus* and the Angelic Salutation, and will recite the Psalm *De profundis*, or, if he does not know it, the *Oremus*, he will gain an Indulgence of one hundred days each time.

"In the distribution of this kind of rosaries, crosses, etc., and in their use, the Most Holy Lord commands that the decree of the venerable memory of the Pope be observed."

[*Latin ed. p. 576*]

Furthermore, it forbids anyone, under pain of penalty, to pass to the sick and those near death, namely, crowns, crosses, rosaries, etc., as mentioned above, in such a way that they would not, with regard to Indulgences, benefit the persons to whom such Indulgences have been granted, or to whom they are distributed for the first time; nor may any replacement

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be made for those that have been lost, for any reason whatsoever, by means of the aforementioned objects, notwithstanding any previous concession or privilege. Moreover, such objects may not be lent or given temporarily for Indulgences, otherwise the Indulgences already granted will be lost.

Also, it is desired and commanded that the aforementioned list of Indulgences, now revised and amended, be printed in Latin after the Pontifical Blessing, and may also be printed in another language, provided that it has the approval of the Holy See or of the Sacred Congregation for Holy Orders, according to the Sacred Congregation for Indulgences, which published the aforementioned decree in the Italian language on the 5th of May, 1721.

Furthermore, the HOLY SEE confirms that the printing of this decree, as well as the record of the blessed Pope Benedict XIV, dated the 19th of August, 1752, in which it is expressly declared that Masses celebrated at the altar (in which a special mention of the aforementioned cross, or crucifix, or image of the Divine Redeemer has been made), whether read by a priest who has with him such an image, or celebrated in its presence, do not, by the power of said image, enjoy any privilege whatsoever.

Given at Rome, from the Secretariat of the Sacred Congregation for Indulgences and Holy Relics, on the 4th of May, 1853.

F. CARD. ASQUIMUS, Prefect.

A. Colombo, Secretary.

[*Latin ed. p. 577*]

577 APOSTOLIC LETTERS. We present the following Apostolic Letters, issued in brief form, by which Our Most Holy Lord, whom God may preserve for a long time, has deigned to bestow the most brilliant praises upon the distinguished Roman periodical entitled "LA CIVILTÀ CATTOLICA," rightly paying tribute to its excellence and striving to promote its lasting and perpetual existence. For Nicholas, the Roman Pontiff, said with no less eloquence than truth: "So great is the authority of the Apostolic See, that all strength is required from it, and nothing is considered stable unless it has been confirmed by its power" (1). We are also pleased to refer to these same Letters, especially since they demonstrate how greatly the Most Holy [Pope] favors Catholic writers who undertake the defense of Christ Our Lord and His Church, and of its doctrine, in this deluge of worthless books, which converts the useful discoveries of science to the detriment of the wretched human society. Furthermore, on this solemn occasion, we offer our heartfelt gratitude to the distinguished authors of that periodical, for it occurred to us at the end of the year 1863 that, in order to disseminate, in a manner useful to the Church, the doctrinal acts of the Holy See, which would be more beneficial and could be made known, we should not fail to consult those men who shone with doctrine, prudence, and ecclesiastical dignity, and especially those distinguished authors of the aforementioned

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periodical, who, with their wise counsel, contributed their efforts to bring our plan to fruition, as reason demanded. The Apostolic Letters are of the following tenor: (1) In the diploma, which is referred to in the "Annales Camaldulensium" at "Costradoni, page 173 of the appendix. Acts, vol. I, section X. PP. Mittarelft 37."

[*Latin ed. p. 578*]

578 APOSTOLIC LETTERS. PIUS IX, POPE. FOR PERPETUAL REMEMBRANCE. "The most grave duty of Our supreme apostolic office entirely demands that We diligently attend to those matters which We know can, in every way, contribute to the cause of the Catholic Church and to the salvation of souls, matters which have been divinely entrusted to Us by Christ the Lord. With a certain and truly immense sorrow, We saw and lamented, when, without Our own merits, but by the secret counsel of divine Providence, We were brought to this Chair of Peter, the great and never sufficiently lamentable damages and evils which are inflicted upon the Catholic religion, and even upon civil society itself, in these most grievous times, by those who despise all justice and truth, through pestiferous books, pamphlets, and especially through exceedingly harmful periodicals, which are filled with wicked errors and teachings, and which are written with the most bitter and utterly diabolical hatred against Our divine religion, and which are widely published and disseminated among the people. Therefore, among other things, We have repeatedly urged men endowed with piety, intelligence, and sound doctrine to defend Our most august Religion with their writings, under the guidance of their own Bishop, to refute its opponents, and to expose the monstrous aspects of those opinions, to refute, overthrow, and dispel them, and to illuminate with the light of truth the minds and hearts of those, especially the unwary and the inexperienced youth, who are being led into vice. (Allocution, April 20, 1849.) And We are certainly greatly rejoiced when We see that many men have arisen everywhere who, readily obeying Our exhortations and desires, and animated by a great love for the Catholic Church and for this Holy See, do not cease to repel with suitable writings the most terrible flood of serpent-like errors and the harmful plague of wicked periodicals, and to defend truth and justice, to the honor of their own names. But in order that there may always be men who, sincerely devoted to Us, and to this Chair of Peter, and who, with love for Our most holy religion, and with a love for sound and solid doctrine and learning, may be able to strive for the good, and with their writings may continuously defend the Catholic and salutary doctrine, and vindicate it from the deceptions, injuries, and errors of its adversaries, We have desired that the distinguished Religious Society of Jesus establish a

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College of Writers, composed of members of that Society.

[*Latin ed. p. 579*]

APOSTOLIC LETTERS. There are those who, through opportune and suitable writings, might vigorously and knowingly refute those false doctrines that have emerged from the darkness, and with all their strength, tirelessly defend the Catholic religion, its doctrine, and its laws. These religious men, diligently observing and studying our desires with the greatest willingness, have already, since the year 1850, undertaken to write and publish a periodical, entitled *La Civiltà Cattolica*. Following the illustrious example of their predecessors, and never sparing any effort or labor, through this very periodical, carefully and wisely prepared, they have diligently defended the truth of our holy religion, and the supreme dignity, authority, and power of this Apostolic See, and have taught, spread, and multiplied the true doctrine, while exposing, combating, and repelling the nefarious efforts of those who seek to undermine the Catholic Church, and, if it were ever possible, to utterly destroy civil society itself. Consequently, the authors of the aforementioned periodical have rightly earned the esteem and approval of Ourselves, and of Venerable Brothers, Holy Prelates, and distinguished men, and their periodical has been, and continues to be, held in high regard by all good and well-meaning people. And since, through this periodical, which has been in existence for sixteen years, great benefits have accrued to the Christian cause and to the literary republic, with God's gracious help, and with great joy of Our own, it is Our firm desire that this excellent work may continue to flourish perpetually, for the greater glory of God, for the care of souls, and for the ever-increasing promotion of sound scholarship. Therefore, by these letters, We establish and constitute, in a permanent manner, the aforementioned College of the Society of Jesus, which publishes the periodical *La Civiltà Cattolica*, within its own special house, by Our Apostolic authority, according to the laws and privileges enjoyed by other colleges of the same Society of Jesus, with the proviso that the aforementioned college shall be entirely subject to the General Prefect of that Society in all matters. We wish the purpose of this college to be that those who are appointed by the General Prefect.

[*Latin ed. p. 580*]

580 APOSTOLIC LETTERS. Those who have been chosen from Nerola for the same undertaking, or for composing other works, as it may seem opportune to Us, or to Our Successors, the Roman Pontiffs, ought to dedicate all their efforts, industry, and diligent study to composing and publishing writings for the defense of the Catholic Religion and of this Holy See. Therefore, We wish that these writers continue to reside in the buildings which We have already designated for them in this city, in the hospice where heretics are converted, subject to the conditions which We have prescribed,

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and until a more suitable dwelling can be found. We grant that they may, for the sake of their work, have libraries and workshops, and may publish and sell books, and widely disseminate them throughout all regions. The revenues which are presently available, and which may be available in the future, should be used to support this same work, and to increase it more and more, so that ever stronger and more effective defenses may be presented against the attacks of so many and such enemies. If, at any time, it should happen that this College of Writers must leave this, Our beloved city, We wish that they may be able to establish themselves in any other suitable city, with the agreement of the General Prefect of the Society of Jesus, together with Our own, and with the agreement of Our Successors, the Roman Pontiffs, and that they may there carry out their work, until, once obstacles have been removed, they are recalled to their former seat by the same General Prefect. But if, perchance, no suitable place is found for continuing the work, We wish that then the funds and revenues should be reserved for that same undertaking, to be restored as soon as it is possible. And We grant all these privileges not only to the members of the present College, but also to others who may be chosen by the General Prefect for this same work, both now and in the future, permanently, reserving to Ourselves and to Our Successors the power to make some change concerning this College of Writers of the Society of Jesus, and forbidding to all others, of whatever rank, authority, or degree, any interference whatsoever. We establish, We wish, We grant, We command, and We order that these Our Letters, and all that is contained in them, shall be valid, even if those who may be interested, or who claim to be interested, have not been called, or have not been heard, and have not agreed to the foregoing.

[*Latin ed. p. 581*]

APOSTOLIC LETTERS. It is to be noted that these [Letters] may be impugned, or otherwise infringed, suspended, restricted, limited, or brought into question; or that a remedy in law or in fact, or a remedy of justice, may be sought against them; but they shall always exist and be effective, and shall always produce their full and complete effects, and shall be inviolably observed by all to whom they apply, and will apply in the future, by all means; and they shall be observed by the aforementioned College of the Society of Jesus, in its publication commonly known as *La Civiltà Cattolica*, and also by those persons whose favor these present Letters concern, for all time to come; and they shall never be held as evidence, or as verification, of anything narrated therein, nor shall anyone be compelled or forced to do so, either in court or otherwise; and if, by anyone, through any authority, knowingly or unknowingly, anything should happen contrary to this, We declare and ordain that it shall be void and of no effect. Notwithstanding this, whenever it is necessary, without infringing on the law in question, and other rules of Our Apostolic Chancery, as well as the confirmations of

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the Society of Jesus, or any other established statutes, customs, privileges, indulgences, and concessions, even if expressly, specifically, and individually mentioned, and deserving of derogation; with all and each of these, with their respective terms and forms, We hereby expressly and specifically derogate, for the purpose of the foregoing alone, in the widest, fullest, and most special manner, and derogate from all other contrary things whatsoever. Given at Rome, at St. Peter's, under the Fisherman's Ring, on the 12th day of February, in the year 1866, in the fifth year of Our Pontificate.

*Seal PIUS PP. IX.

Furthermore, on this occasion, We also express our gratitude to those writers of other Catholic periodicals who have included information about our periodical in their learned writings, or who have not hesitated to write articles about it out of generosity, as, among others, have been done by the celebrated and learned periodicals in France: *REVUE DES SCIENCES ECCLÉSIASTIQUES*, directed by M. l'Abbé de Bouix; in Ireland: *THE IRISH ECCLESIASTICAL RECORD*; in Italy: *UNITÀ CATTOLICA*; and others, such as the learned and ancient periodical entitled *LA SCIENZA E LA FEDE*, and another entitled *ARCHIVIO DELL'ECCLESIASTICO*.

[*Latin ed. p. 582*]

582 FROM THE SACRED CONGREGATION OF RITES, LAWS, AND PRIVILEGES. December 5, 1863, and June 25, 1864. Session 24, chapter 14, concerning reforms. The present case, which at its beginning seemed simple, has grown to such a degree through the heat of discussion that it has become entirely complex and multifaceted, arising from the documents presented and from alleged Apostolic privileges. Since the resolution of the Sacred Congregation does not appear to deviate greatly from common law, therefore, we will indicate only those matters which seem certain and which could have influenced the decision of the case. Summary of the facts. There is an ancient church dedicated to the Most Holy Virgin Mary, located within the parish of A., which church has annexed to it an oratory of more recent construction, and a certain hospital or infirmary for sick fishermen. The entrance to the oratory is located within the same church. Within the church, there exists a lay sodality; and within the oratory, there is a certain congregation of priests, who, in addition to celebrating Mass, perform special offices, either for the sodality, or for the hospital, or for the church; so that among them there are chaplains, confessors, a sacristan, a prefect of clergy, and others, who hold meetings there to resolve moral questions, and who are chosen by the members of the sodality and are removable at the will of the clergy to perform these duties. A dispute has arisen between the sodality and the parish priest, within whose parish boundaries it is located, before the episcopal court, concerning certain rights, and especially concerning the right of the sodality to carry the cross without a pallium in sacred processions. The bishop is said to have prohibited the sodality

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from carrying the cross without a pallium during a sacred visitation, but the members of the sodality, claiming Apostolic privileges, defended themselves, although they never presented any documents of these privileges to the bishop. Furthermore, there are other disagreements.

[*Latin ed. p. 583*]

OF RIGHTS AND PRIVILEGES. 583. When disputes arise between the members of the Sodality, the Parish Priest, and the Bishop, concerning alleged privileges, the case was first brought before the episcopal court, and was decided by the following judgment: "We definitively judge" that neither in matters of possession, nor in matters of petition, does any right or privilege of precedence for the Cross in processions and funerals, or for the pallium, belong to, nor can it belong to, any lay confraternity under the title of Saint Mary... nor does any such exemption from the jurisdiction of the ordinary Parish Priest of Saint Sebastian, within whose territory it exists, belong to any such lay confraternity in matters of spiritual affairs, nor can any such exemption from the jurisdiction of the Bishop, exercised by himself or by any of his delegates, be granted: that all the common and particular laws of our diocese must be observed, etc." From this complex judgment, the Sodality appealed to the Sacred Congregation, and a heated debate took place in the city by advocates appointed on both sides, concerning the doubtful formula: "whether and how the judgment of the episcopal court (N.) should be confirmed or overturned in this case." However, the Sacred Congregation, having called the case for examination on December 5, 1868, decided to postpone the resolution, and ordered that evidence be supplemented, and that doubts be clarified regarding each question, and ordered the following: "Let the evidence be extended and supplemented on both sides, and let documents and records, including those of the Most Holy Visitations, and all matters pertaining to the case, be presented, and let specific doubts be clarified regarding each question." Therefore, in accordance with this order of the Sacred Congregation, the case was presented again under five doubts, which are given at the end.

A SYNOPTIC DISCUSSION.

DEFENSE OF THE SODALITY REGARDING THE FIRST DOUBT.—We will indicate the main points of the arguments most copiously presented by the disputing advocates (1). In order that the process of the discussion may be understood, the following must be stated as certain facts. Namely—(1). The cause of the Sodality is defended by the Reverend Ángelus Fazzini, advocate, while the cause of the Parish Priest is defended by Salvator Martini, advocate.

[*Latin ed. p. 584*]

884 OF RIGHTS AND PRIVILEGES. Before the year 1711, the question

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raised in the first doubt had been debated: For at that time, the Bishop had prohibited the Sodalitium from carrying the cross without a veil in processions; the Sodalitium appealed to the tribunal of the Auditor of the Apostolic Camera, according to the former custom, and obtained an injunction on June 26, 1711, with a summons and prohibition, valid by virtue of the appeal. Therefore, the Defenders debated among themselves regarding the force and meaning of this injunction. However, whatever the force and meaning of this injunction may have been, it sufficiently demonstrated that, even before it, the Sodalitium was already considered to possess a custom, said to have originated from some Apostolic privilege, of carrying the cross without a veil in processions. After this injunction, the Parish Priest of that time and the Sodalitium entered into a certain agreement, in order to avoid litigation and maintain peace, in the year 1713, with the consent of the Bishop. However, this agreement was never presented to the Holy See, and therefore was never approved. What rights the parties involved agreed upon at that time will become apparent in the following course of the discussion. Therefore, regarding the first doubt of the Sodalitium, the Defender maintained that the aforementioned agreement, made after the injunction, was valid, in which the litigating parties promised to each other, and to their successors, not to prevent the Sodalitium from carrying the cross without a veil in the customary processions. However, the Defender argued, with several authorities cited, that such an agreement has force and produces all the effects that a valid agreement normally produces in law. But, even if it were to be said that this agreement is invalid due to the lack of Apostolic approval, the Defender maintained that it should have been confirmed in the present case, as had been the case in the cause of Montis Alti, of February 28, 1808. In that case, Cardinal Pacca, the relator for that cause, explained to the Holy Congregation the following regarding an agreement concerning a certain modification of a will, which had already been initiated without Apostolic approval. Among other things, the relator said: "Whatever the circumstances may be, who can deny that in this doubt concerning rights, there is a place for the confirmation of the agreement between the Siliquinians and the Tomassians, even though the testator Rinalducci's mind and will may have been altered in some way?" Let us pause for a moment.

[*Latin ed. p. 585*]

RIGHTS AND PRIVILEGES. 585 » The transaction of which we are speaking is, with Apostolic approval, not strengthened: and why? Because disputes have arisen between these families, controversies have been renewed, and finally, the greatest sums have been spent in conducting these litigations. To avoid so many and such evils, which are detrimental to the public good, it is urged and recommended by jurists that transactions of this kind, which have been initiated concerning a doubtful matter,

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should be ratified and confirmed, and that the approval of the highest Prince should also be obtained, even though the last wills of the deceased seem to prefer a different arrangement. The Doctors give the reason that these kinds of transactions concern the public good, which is especially concerned with resolving litigations and settling controversies.

Regarding the proposed question: whether and how it is to be considered concerning the approval and confirmation of a transaction in this case: The Sacred Congregation responded affirmatively in all respects, according to the opinion of the Eminent Relator. The Defender argued that this matter should be considered with even greater reason in the present case, since it concerns a transaction that was initiated after the aforementioned warning, which granted the right to carry the cross without a veil. Especially since, until the beginning of the present controversy, no one has ever dared to oppose such a transaction. Therefore, if one considers the long-standing and peaceful custom, this right could not be denied to the Sodalitas. The Decree of the City and the World, of December 10, 1703, concerning similar questions, when dealing with conventions, agreements, and also memorable and centuries-old customs, stated as follows: "provided that conventions and agreements made in the founding of the confraternity, concordats between the parties, initiated and approved by the Holy See, indulgences... and memorable or at least centuries-old customs are observed."

DEFENSE OF THE SODALITY REGARDING THE SECOND QUESTION.— Concerning the right to carry funerals independently of the Parish Priest, the Defender pointed out that this concerns the funerals of those who die in the Sodalitas's hospital. This right had been established in the aforementioned transaction, and has since been maintained; indeed, he argued that such a right is in conformity with the practice of the entire Church, and that Parishes have been prohibited by the Council of Trent from interfering with their jurisdiction in hospitals, in session 24, chapter 13, in which it was decreed: "in unions..."

[*Latin ed. p. 586*]

586 OF RIGHTS AND PRIVILEGES. Parochial churches... and hospitals... should not be united with any [group], and this was decreed by the Sacred Congregation in the case of Senogallia, on June 8, 1765.

DEFENSE OF THE SODALITY REGARDING THE THIRD QUESTION. The Defender also argued that the Sodality possessed the right to conduct sacred processions independently of the parish priest, because this right had been confirmed and admitted in the aforementioned agreement of the year 1713, in which mention was also made of a previous, laudable custom. Furthermore, the Defender cited a decree of the Sacred Congregation of Sacred Rites, dated July 19, 1604, in which, among other things, the following was granted to the Sodality in question: "to perform solitary processions each month, and on other customary feast days, provided that

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they observe the form of the book of ceremonies concerning the carrying of baldachins in the procession before the Most Holy Sacrament, and that these processions should be performed in the same manner and form as they are performed in the cathedral church." Indeed, the Defender asserted that the right to perform customary sacred processions outside the confines of its own church belonged to Sodalities by common law, and that this had been decided in the case of the Sacred Congregation of Councils in Cremona, on June 5, 1723, regarding the second question: "whether said confraternities can perform the same procession with the intervention of a chaplain or another priest by themselves, and not by the prior." The Sacred Congregation responded affirmatively to the second question.

DEFENSE OF THE SODALITY REGARDING THE FOURTH QUESTION. The Defender interpreted the fourth question in such a way that the pastor of the church, the members of the Sodality, and other priests devoted to it, without the permission of the parish priest, have the right to preach the word of God. To support this right, in addition to the custom admitted in the agreement, the Defender cited the decree of the City and the World of the year 1703 regarding the sixteenth and eighteenth questions.

DEFENSE OF THE SODALITY REGARDING THE FIFTH QUESTION. With extensive learning, the Defender argued regarding the fifth question that the Sodality, through its priests, can perform all non-parochial functions independently of the parish priest. He stated that it is established by law that, except for the blessing of houses on the Sabbath, the administration of baptism, assistance at marriages, and the performance of funeral rites for the deceased parishioners in the presence of the body (but not in exempt churches), all other functions are.

[*Latin ed. p. 587*]

RIGHTS AND PRIVILEGES. 587 All those not pertaining to a parish are considered to be such, according to the often-cited Decree of the City and the World of the year 1703. And, omitting the rest, the Defender presented the following Resolutions of the Holy Congregation, namely, in Orte on July 5, 1738, in which the following questions were proposed: "I. Can lay members of the Terra Suriani Brotherhoods fulfill non-parochial functions in churches, such as the celebration of Masses, with the assistance of a deacon and a subdeacon, independently of the parish priest, on the most solemn festivals of these churches? II. Can the chaplains of these churches recite the Office for the Dead and sing the Mass according to the prescribed Ritual, before the bodies are buried in these churches, or rather, does this pertain to the parish priests?" The Holy Congregation responded: To I, affirmatively. To II, affirmatively regarding the first part, negatively regarding the second. Also, in Fermo, concerning parochial rights, on June 2, 1736, the following questions were proposed: "I. Can priests appointed by the

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aforementioned Suffrage Society solemnly sing Masses in churches, or in a chapel under the title of Suffrage, without the permission of the parish priest of Saint Mary? Or, rather, must the same Mass, in order to be sung in said church or chapel, be celebrated by the same parish priest, even with the confreres present? II. Can the Most Holy Eucharist be exposed for public adoration in said church or chapel, with only the permission of the Ordinary, without the intervention of the aforementioned parish priest? III. Can the same parish priest of Saint Mary request at least the right to bless the people with the Most Holy Sacrament in said church or chapel, even with the confreres present?" The Holy Congregation responded: To I, affirmatively regarding the first part concerning the permission of the Bishop; and negatively regarding the second. To II, affirmatively. To III, negatively. And finally, in Orte, as cited above, regarding the second question: "Can the parish priests perform both parochial and non-parochial functions in these (lay brotherhood) churches, without the necessary officials and chaplains of these churches?" The Holy Congregation responded: Negatively. DEFENSE OF THE PARISH PRIEST. The parish priest, as Defender, first of all, through ample prayer, sought to exclude several of the privileges claimed by the Brotherhood from the exemption. And, reminding of the decree of the year 1700, as indicated above, he stated that it is nothing other than a precept, valid by the force of appeal.

[*Latin ed. p. 588*]

5.88 OF RIGHTS AND PRIVILEGES. This was done so that the other party would not proceed with the execution of the judgment in the meantime; for this purpose, letters of inhibition were issued by the Auditor of the Chamber at that time, which served to delay the transaction of 1713. He informed [the court] of this for various reasons, especially due to the lack of Apostolic Approval. For, if Apostolic Approval is required, as in the granting of a property, it cannot be omitted without jeopardizing the public order of the hierarchy; especially when the transaction concerns obligations binding on successors. To support this, the Defender of the Sacred Roman Rota cited the capitular canons concerning concordats, February 9, 1798, § 9 and following, before the De Alienis tribunal, in which it is written: "Even a concordat must be considered 'null and void' if its validity is not established: namely, due to the absence of Apostolic Approval... For contracts entered into concerning Church property, according to the form they call 'substantial,' require the approval of the Pontiff without which they are not valid. Cardinal Petra, etc., etc...." Nor does it matter whether the contract is between a layperson and the Church, or with the Church itself; in either case, Apostolic Approval is necessary, so that if a Bishop enters into a transaction with his Chapter, it is not considered firm and valid unless it has been confirmed by Apostolic authority. It is of less importance whether the transaction concerns money of any kind, or real

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estate. Even if the transaction concerns any temporal rights, or jurisdiction, the necessity of Apostolic Approval is equally present. Cardinal De Luca, etc... Especially when such a contract is one that binds successors, because otherwise, the successors cannot be bound except with all the solemnities of law: therefore, a transaction entered into by the Chapter concerning the rights and property of successors is not valid unless it has been confirmed by Apostolic Approval. With these and other arguments, the Defender concluded that all special titles by which the Sodalitas claimed its supposed rights were excluded in the present case; and therefore, he maintained that every doubt should be resolved according to the norms of common law alone. Regarding the first doubt, concerning the carrying of a cross without a veil, the parish priest should refrain from further discussion.

[*Latin ed. p. 589*]

RIGHTS AND PRIVILEGES. 589, abandoning the defense of his Bishop; nevertheless, the Parish Defender did not fail to adduce the authority of Ursay's *Discipulina Ecclesiastica*, volume B, part 2, discourse 23, number 54, in which it is written: "The permission of the Archpriest in no way suffices to impede the effect of the resolutions of this [body]," and other decrees of the Sacred Congregation. The reason for prohibiting lay confraternities from promiscuously using that cross, which is common to the secular and regular clergy, was not favor or respect for any Parishes; but it was demanded, and must be punctually observed in all Catholic states, in order to avoid confusion, because lay confraternities have no figure whatsoever in the ecclesiastical hierarchy, etc.

DEFENSE OF THE PARISH PRIEST REGARDING THE SECOND DOUBT. The Defender maintained that the second doubt concerned the funeral office, or rather, the beginning of the funeral office. Indeed, it was the custom in that diocese that not the Rectors, but the Parishes, and not the Rectors, but the priests most closely related by blood to the deceased, should perform the funeral rites in each church. The controversy, therefore, concerned solely the Parish Priest's entry into the church with his stole, in the Sodalitas, in which the parishioners, due to the size of the church, often brought the deceased. Furthermore, the Parish Defender sought to demonstrate, with the aid of several authorities, that, according to common law, the Parish Priest is entitled not only to the entry about which there is contention in this case; but also to the funeral office. Barbosa, *De Parocho*, part 3, chapter 26, number 8. Monacellius, *Formulæ*, *Leges Praetoriae*, volume 1, title 13, number 70, etc. "Nor should one yield to the difficulty presented by the diverse custom that prevails in Rome. Regarding this custom, Nicolius writes in the *Flosculum*, under the word "Confraternity," number 20, stating: "However, this is not observed in Rome, where, as I said, the confraternities of the church and oratories are exempt from the Parish." Therefore, when the exemption ceases, common

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law must prevail. Furthermore, the Defender adduced the cited Decree of the City and the World regarding doubt XX, especially since the custom that had prevailed, contrary to this right, was not shown to have been favored by the Parish Priest.

DEFENSE OF THE PARISH PRIEST REGARDING THE THIRD DOUBT. The Defender asserted that it is most fitting that a sodality should not lead prayers outside the confines of the church without the permission and the cross of the Parish Priest in whose parish they are located. Pignatell, *Consilia*, 85, volume 2, and volume 10, counsel.

[*Latin ed. p. 590*]

590 OF THE RIGHTS AND PRIVILEGES. 103 n. 19. The Holy Congregation of Rites confirmed this in Hispalis on February 26, 1628, as reported by Barbosa in *De Parocho Par.*, book 1, chapter 1, number 13: "The Holy Congregation of Rites, in order to remove the difficulties that daily arise concerning the holding of processions, both by religious orders and by confraternities in regular churches, adhering to decrees previously issued in similar cases, has decreed that in holding processions, both by religious orders and by lay confraternities, the following must be observed in the future: in churches that have a cloister, processions may not be held except within the cloister itself, and not outside. In churches, however, that do not have a cloister, they may be held within the precinct, that is, near the walls of the church, either by exiting from the church door and entering through another, or through the same, and always near the walls of the church; outside the precinct of the church, it is not permitted for religious orders or confraternities to hold processions, except with the permission, consent, or with the cross of the parish priest, except for those churches that have a special privilege of holding processions in other places, which this Holy Congregation does not intend to prejudice by this decree." Furthermore, the Holy Congregation of the Council, in Bologna, on March 14, 1722, addressed the 14th question, and also confirmed the celebrated Decree of the City and the World concerning the 20th and 22nd questions. The Defender presented several testimonies, which, even though a settlement had been reached, seemed to indicate that common law had been preserved in this matter.

DEFENSE OF THE PARISH PRIEST REGARDING THE FOURTH QUESTION. The Defender considered it expedient to address the question of permission from the parish priest, requested by a preacher of the Word of God, citing Barbosa in *Collect. Doct. ad Concil. Trident.*, session 24, *De Reform.*, chapter 4, number 8, in which the author notes: "The parish priest must grant permission to those approved by the Ordinary to preach in his parish, as asserted by Galet in *Margarita Casuum Conscientiae*, under the heading 'Parish Priest, etc.'" Furthermore, he presented the warning of St. Charles Borromeo in the Council of Milan, chapter 5. It

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seemed that this was also sanctioned in the diocesan law of the diocese in question.

DEFENSE OF THE PARISH PRIEST REGARDING THE FIFTH QUESTION. The Defender considered any discussion regarding the final question to be superfluous, since the parish priest was claiming only those rights that are derived from common law, which law determines...

[*Latin ed. p. 591*]

RIGHTS AND PRIVILEGES. 59. This is most accurately stated in the esteemed Decree of the City and the World, of the Sacred Congregation of Rites, of the year 1703 (1).

(1) DECREE OF THE CITY AND THE WORLD—"Concerning the functions and privileges of parishes, and the distinctions between parish priests and lay confraternities, and their chaplains and officials." To put an end to controversies that frequently arise between parish priests, secular confraternities, their chaplains, and officials, regarding parochial rights, ecclesiastical functions, and certain privileges or prerogatives, the Most Eminent and Reverend Cardinal Colloredo, in the Sacred Congregation of Rites, proposed the following questions, namely:

1. "Do legitimately established lay confraternities in parish churches have a dependence on the parish priest in the performance of ecclesiastical functions, not parochial ones?" Answer: Affirmative.

2. "Do these confraternities established in chapels, oratories, both public and private, annexed to parochial churches, and those dependent on them, have this dependence on the parish priest with regard to these functions?" Answer: Affirmative.

3. "Do confraternities established in public churches have any dependence on the parish priest with regard to these same functions, within the limits of whose parish the churches are located?" Answer: Negative.

4. "Do confraternities established in oratories, both public and private, annexed to parochial churches, with regard to these ecclesiastical functions, have this dependence on the parish priest?" Answer: Negative.

5. "Are the blessings and distribution of candles, ashes, and palms mere parochial rights?" Answer: Negative.

6. "Are the blessings of women after childbirth, of the baptismal font, of fire, of the sacred vessels, of eggs, and the like, mere parochial rights?" Answer: Negative, but the blessings of women and of the baptismal font ought to be performed by the parish priests.

7. "Are all the weekly liturgical functions mere parochial rights?" Answer: Negative, as stated.

8. "Is the celebration of the solemn Mass on Thursday of the Lord's Supper a matter of these parochial rights?" Answer: Negative, as stated, but it pertains to the parish priests.

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9. "Is the first ringing of the bells on Holy Saturday a matter of these parochial rights?" Answer: Negative, as stated, but it pertains to the more worthy church, according to the form of the Constitution of Pope Leo X, number 22, section 1.

10. "Is the celebration of solemn Masses throughout the year, whether for the living or for the dead, a matter of these parochial rights?" Answer: Negative, as stated, but it is permitted to the confraters, solely on the more solemn feasts of the same church or oratory, as in Brindisi on July 1, 1601.

11. "Is the exposition of the Forty Hours, and the blessing that is performed upon the people, a matter of these mere parochial rights?" Answer: Negative.

12. "Is the exposition that is made with relics, and sacred images, and the blessing that is performed upon the people with them, a matter of these parochial rights?" Answer: Negative, and with regard to the blessings with relics and images, the decrees are to be observed.

[*Latin ed. p. 592*]

392 Concerning RIGHTS AND PRIVILEGES, matters which have been most copiously debated by Defenders, the following are to be resolved: 13. "Concerning the functions mentioned above," eight doubts, namely from doubt 5 to 12: "Can the offices be performed in chapels, whether private, contrary to the will of the Parish Priest?" Answer: Sufficient provision has been made in the foregoing. 14. "Can the canonical hours be recited in said private chapels by the confraternities, at fixed hours, with chanting, or without other permission from the Parish Priest?" Answer: Affirmative, unless otherwise determined by the Ordinary for a reasonable cause. 15. "Can the celebration of a private Mass be permitted in said private chapels, with the consent of the Ordinary of the place, and contrary to the will of the Parish Priest?" Answer: Affirmative. 16. "Can the chaplains of the confraternities announce to the people the festivals and vigils occurring during the week, without the permission of the Parish Priest?" Answer: Affirmative. 17. "Can the Parish Priest, inviting the confratres, teach Christian doctrine in the aforementioned churches, and in chapels, whether public or private, which are distinct from the parochial district?" Answer: Negative. 18. "In the aforementioned public chapels of the confraternities, can public sermons be held, even throughout the entire course of Lent or Advent, with the permission of the Ordinary, and without the permission of the Parish Priest?" Answer: Affirmative. 19. "Can the Mass, whether read or sung, be celebrated in those same chapels before the parochial Mass, whether read or sung?" Answer: Negative, unless otherwise determined by the Bishop. 20. "Does it pertain to the Parish Priest to perform the funeral service over the bodies being carried into the sacred churches, or public chapels of the confraternities?" Answer: Affirmative, when the person being buried is subject to the Parish Priest, within whose jurisdiction the church or chapel

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is located. 21. "Can processions be held within the confines of those same churches, according to the statutes of each confraternity, without the intervention or permission of the Parish Priest?" Answer: Affirmative. 22. "Can those same processions be held outside the confines of the aforementioned churches, without the permission of those Parish Priests through whose territory they must pass?" Answer: Negative, unless the permission of the Bishop is present. 23. "Can the chaplains of the confraternities wear the stole in those processions?" Answer: Negative, outside of their own church. 24. "When the Bishop approaches the public chapels of the confraternities, which are not of regular canons, nor have a proper rector appointed to the benefice, must the Parish Priest carry the aspersorium in the territory in which those chapels are located?" Answer: Negative. 25. "Can the rectors and chaplains of those same churches and confraternities, even when the special and legitimate title is lacking, and solely by the right of parochiality, compel unwilling persons to attend the functions of the parochial church?" Answer: Negative. 26. "Can the Sacrament of Holy Eucharist be reserved in the aforementioned chapels of the confraternities, whether parochial or regular, without a special Indult from the Apostolic See?" Answer: Negative.

[*Latin ed. p. 593*]

503 OF RIGHTS AND PRIVILEGES. Doubts: I. "Whether and in what manner the Sodality has the right to present itself, veiled or unveiled, in that case." II. "Whether and what exemption pertains to the same Sodality concerning the *orationes* [prayers] offered by the Parish Priest in that case." III. "Whether and what exemption pertains to the same Sodality concerning the *processiones* [processions] ordered by the Parish Priest in that case." IV. "Whether and what exemption pertains to the same Sodality concerning the preaching of the Word of God in that case." V. "Whether and what functions the Sodality can perform, independently of the Parish Priest in that case." RESOLUTION. The Sacred Congregation, after discussing the matter on June 25, 1864, decided to respond as follows: 27. "Assuming that the Congregation has the faculty, granted within the year, to publicly participate, without the license of the Ordinary, as if by mandate of the Ordinary, and as his delegate, can it give a decisive vote? And if so, in what manner?" Response: Negatively. 28. "Can the Parish Priest interfere in the administration of offerings and alms collected in the aforementioned churches, or retain the key to the box for receiving them?" Response: Negatively. 29. "Can the members of the Confraternity, or their chaplains, interfere in the functions of the parish church, or of other churches, invited or uninvited by the Parish Priest, in accordance with the synodal constitutions, provincial regulations, and customary practices, or at least those of a century's standing?" Response: Negatively. 30. "Whether the Confraternities, whether erected in the parish church, or outside of it, can,

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at will, and according to the particular statutes of each of their Congregations, perform their own functions, without interference or permission of the Parish Priest." Response: Affirmative, provided that they do not impede the Divine Offices. 31. "Can they administer their own property, and dispose of it, without any dependence on the Parish Priest?" Response: Affirmative.

Acta, vol. I, part X.

On December 10, 1703. "And then, I, as Secretary, presented the aforementioned Decrees to the Most Holy Lord, after a complete reading of them, and He approved them with benevolence, ordered them to be published, and commanded that they be observed, notwithstanding any other things that might be contrary to them."

On January 12, 1704.

[*Latin ed. p. 594*]

594 OF EXEMPTIONS AND PRIVILEGES. To I. Affirmative (I). To II. Affirmative for the deceased in the Hospital; in other cases, the response %X should be followed. Decree of the Holy City and the Holy Roman Congregation of December 10, 1703. To III. Affirmative through customary processions, even around the external area of the church and the adjacent square; in other cases, negative unless the permission of the Bishop is present. To IV. The same Decree should be followed in the response to question XVIII. To V. Affirmative in all matters concerning non-parochial ecclesiastical functions, according to the form of the aforementioned Decree in questions III and IV. FROM THE ABOVE, WE GATHER: I. The Holy Congregations do not deviate in resolving such matters from the Decree of the Holy City and the Holy Roman Congregation of December 10, 1103. II. This Decree is not to be superseded by agreements that lack Apostolic approval, even if the consent of the Bishop has been obtained in those agreements. III. Such agreements, even if they are ancient, although they may sometimes produce certain legal effects, such as custom or prescription, or may even serve as evidence due to long-standing observance, do not, when considered in themselves, possess the force of obligation; nevertheless, they should be confirmed by the Holy See. IV. What is initially flawed cannot be strengthened by the passage of time. (I) The Holy Congregation, in this first question, deviated from the common law; the reason for this deviation appears to be an ancient custom that favored the Sodality, which was not merely simple, but possessed special characteristics of prescription. For although such ancient customs may suggest a legitimate title, and even an Apostolic privilege, in those rights in which this privilege can be presumed, in the present case, something more than a simple presumption was at stake. Indeed, it was certain that the Sodality enjoyed a distinguished privilege, as mentioned in the aforementioned Decree of the Sacred Congregation of 1604; moreover, in the contradictory parts of article 1711, this custom remained; nor did

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this veiled cross, which is considered proper to the clerical order, seem to be entirely abnormal in the case of the Sodality, to which a considerable number of clerics were devoted.

[*Latin ed. p. 595*]

595. SS. FUNCTIONUM. May 28, 1864. Session 24, item 13, concerning Reform. A Summary of Facts. A certain monastery of nuns possessed a rural estate located in a place approximately two thousand paces from the parish church. The monastery, on that estate, near the surrounding farms (solatium), erected a public oratory from its foundations in the year 1776, and dedicated it to the Most Blessed Mary of Graces (B. V. Mariae Gratiarum), because of a miraculous image that was discovered depicted on a ruined wall. The monastery itself oversaw the celebration of Mass by the chaplain on feast days. However, on the second day of Pentecost, the day on which the title of the oratory was commemorated, a solemn feast was held, with the parish priest and his clergy present. In the year 1809, when the assets of pious institutions were unjustly seized and appropriated by the French government, the possession of that estate, along with the oratory, came into the possession of a certain Titus. This Titus, concerned only with the estate he had purchased, seemed to care nothing for the upkeep of the oratory, as if this care did not pertain to him. Therefore, the pious inhabitants themselves, at their own expense, ensured that, on certain days, both Mass and the feast were celebrated; and this feast was celebrated by the parish priest, at the request of the inhabitants, as the nuns used to do. However, in the year 1859, the pious Knight N. purchased the estate, along with the oratory, which was described in the instrument of purchase and sale as a "chapel." This purchaser restored the already dilapidated oratory, embellished it, and also took care to ensure that it would be enriched with indulgences through the benevolence of the Holy See. When this pious Knight intended to establish a lay chaplaincy in the oratory, with the obligation of celebrating Mass twice a week, and having the chaplain perform other ecclesiastical functions, except for those pertaining to the parish; the parish priest opposed this, claiming certain rights over the aforementioned oratory. The parish priest, in fact, contended that he had the right to celebrate the feast of the title each year with the assistance of the clergy, according to the established custom; and he also requested that the oratory be made available for the convenience of the faithful, whenever they required it.

[*Latin ed. p. 596*]

596 SS. FUNCTIONUM. He stated that it was the duty of the clergy to ensure that it was not fitting for the Knight N. to retain the keys of the Oratory with him. After hearing the report of the Bishop, and with other considerations held in reserve, two questions which are presented

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at the end were proposed to the Holy Congregation of the Council for resolution. Synopsis of the discussion. DEFENSE OF THE PAROCHIAL PRIEST. — The Parochial Priest insisted on the following reasons to defend the rights he claimed; he stated that the Knight N. had no patronage rights over the Oratory; for he had purchased the property from Titus, who had renounced these patronage rights; therefore, the Knight N. could not claim these rights, since Titus had not transferred them to him through the sale of the property, and the people seemed to have acquired them. Therefore, although the Knight N. was to be praised for his piety in establishing the chapel and enriching it with pious works, nevertheless he could not prevent the Parochial Priest from celebrating the feast day as was customary, nor could he prevent the surrounding people from visiting the chapel for their own freedom and devotion, and from making pious offerings for the celebration of Masses, and from doing other things as was customary. These things could not be done if the Knight retained the key of the Oratory with him. To claim the right to celebrate the annual feast day, the Parochial Priest alleged a custom, the memory of which extended back to the year 1800, which custom had continued uninterrupted until that time. DEFENSE OF THE KNIGHT. The Knight appointed a defender of his rights in the City, who argued as follows. It is well known that anyone who has approached the boundaries of ecclesiastical law knows that the foundation and construction of a church acquire patronage rights, and that these rights are also real if they are attached to the property, Gagliardi de iure pair. c. 3. §. 11. Furthermore, patronage rights are transferred with the property to which they are attached; therefore, by the purchase of the property, this right of patronage is transferred to the buyer without price, Cap. Ex Uteris de iurepatronat. Moreover, it was established that Pope Pius VII, after the removal of the tyrannical dominion of the Gallic invader, confirmed with his Apostolic authority the contracts entered into concerning ecclesiastical property. Therefore, the Defender concluded, the patronage rights of the Oratory had passed first to Titus, and then, with the purchased property, to the Knight N. To the objection that Titus had renounced or lost these patronage rights, the Defender replied:

[*Latin ed. p. 597*]

The Most Holy Fathers decreed that the renunciation of patronage is not to be presumed, but must be clearly and conclusively proven, just as any cession or renunciation of rights that are based on facts must be proven. Furthermore, in this case, Titus had not been deprived of this right by a formal decree of the Bishop; rather, the declaration of intent made in the deed of sale of the property, in which the chapel was designated as a patronal chapel, excluded the presumption of renunciation, as Menoch teaches in *De Praesumptionibus*, I, 1, question 55, number 11. However, the Defender, addressing the matter more closely, pointed out that, according

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to the law, a parish church possesses no jurisdiction over other churches located within the parish boundaries, and that a chapel belonging to lay patrons does not depend on the parish priest for functions that are not parochial, unless the parish priest enjoys a special right or privilege, as stated in the final chapter of *De Officiis Archiepiscopis* and in the chapter *De Capellis Monachis*. As for what constitutes parochial functions, omitting all others, Benedict XIV teaches in *Institutiones*, 105, citing the general decree of the Holy Rite Congregation, *De Urbis et Orbis*, of December 10, 1703, and the Holy Congregation has often resolved similar questions in accordance with the form of that decree, and in particular, in the case of *SS. Functionum* in Rieti, on January 13, 1854, and in another case, *SS. Functionum* in Marsorum, on June 26, 1858, in which a question very similar to our own was raised, and to the doubt: "Is it permissible for patrons to celebrate solemn Masses and other non-parochial sacred functions, especially on a feast day, in their public chapel, through a chaplain or other priests independently of the parish priest?" the response was: "Affirmatively, in accordance with the decree *De Urbis et Orbis* of the Holy Rite Congregation of December 10, 1703." Moreover, the Defender noted, with other observations, that even if the assertions of the parish priest were true, they would not be sufficient to establish the right that the parish priest claimed, namely, to say Mass on the second Sunday after Pentecost in the aforementioned chapel. For, according to the cited decree of 1703, in order for the parish priest to claim this right, it would be necessary to demonstrate a long-standing, or at least a centennial, custom, which was not the case here. Nor could prescription apply, for the parish priest did not have access to the celebration of the feast by his own right or by reason of his parochial office, but was requested by the patrons. Therefore, the faculty was granted by the

[*Latin ed. p. 598*]

598 SS. FUNCTIONUM. The parish priest became the custodian of the keys, a privilege granted annually, which prevented the imposition of a prescription. For, acts that merely facilitate do not establish a prescription, as De Luca de Beneficiis, page 1, section 89, number 15, and others, state. Regarding the retention of the keys, the Defender of the Faith noted that such a matter could be raised by the parish priest to obscure the piety of the Knight N. Indeed, the pious Knight himself, while residing in the countryside, would open the doors of the oratory to those who sought it, and when he left his rural residence, he entrusted the keys to the colonist, as had previously been done by Titus. Moreover, the Knight N. rightly refused to deposit the keys themselves with the parish priest, since, according to the text in I Clavibus, in the sections on contracts of sale, the keys denote ownership and jurisdiction, and their custody is included among the rights of the patron, as stated in Mantissa ad Card. de Luca, volume 3, section 13,

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decision 4, number 3, and in the decision of the Sacred Rota, number 1311, number 3 and following, before Emerix; a jurisdiction which the parish priest did not possess over the oratory. Therefore, the proposed questions are to be resolved. I. "Is it permissible for Knight N. to celebrate solemn Masses, and other non-parochial sacred functions, especially on the second day of Pentecost, in the public oratory, through a chaplain, or other priests, independently of the parish priest, in this case?" II. "Is it, and how, permissible for the same Knight to retain the keys of the oratory in this case?" RESOLUTION. — The Sacred Congregation, having knowledge of the matter, decided on May 28, 1864, to respond as follows: To I. Affirmative, according to the form of the Decree of the Sacred Congregation of Rites of the City and the World, of December 10, 1703 (1). To II. Affirmative. WE GATHER FROM: I. Although the right of patronage, without any taint of simony, cannot be sold or bought; nevertheless, the ownership of the right of patronage can be transferred to the buyer, along with the purchase of the property to which it is attached. II. This has occurred in the present case, in which the right of patronage passed to the first buyer, Titus, along with the property, and then to (himself). (1) This Decree is found on page 591 in the notes.

[*Latin ed. p. 599*]

S. S. FUNCTIONUM. 599. According to [this], although the first benefactor was supposed to bear the expenses, as was fitting, this was not the case. I.H. Furthermore, it is gathered that the Parish Priest, by reason of his parochial office, does not have jurisdiction over public chapels which may happen to be found within the boundaries of his parish. IV. Therefore, it pertains to the Rector of the chapel, or others who are concerned, to celebrate ecclesiastical functions independently of the Parish Priest, provided that these functions are not parochial, while observing what must be observed. SERVICES OF THE CHOIR. March 21, 1863. Session 23, chapter 1, concerning Reforms. Summary of the case. The Bishop N. arranged for the erection of a distinguished collegiate church dedicated to St. Andrew the Apostle in a certain city within his diocese. In the Apostolic Letters issued in the year 1856, the Bishop was granted the faculty of erecting a distinguished collegiate church. Among the other laws prescribed in those same Letters, there were these concerning the obligations of the Canons: "that (the) Canons shall perform the entire choral office on every day of the year, except for the days they call 'half-holidays,' and on all the feasts, which they call 'first class,' including the first vespers, and also throughout the entire octave of Corpus Christi, and the conventual Mass for the benefit of benefactors in general, according to the form of the Constitution *Fel. Rec.* Benedict XIV, Our Predecessor, beginning with 'Cum semi...' and so forth." A doubt therefore arose among the Canons as to whether they were bound to the choral service on feast days which are called 'half-holidays,'

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or 'sublatas,' or 'suppressed.' Since the Bishop seemed somewhat hesitant in this matter, the doubt was proposed to the Sacred Congregation of the Council. The reason for the doubt lay in the fact that, although Pius VII, in *Fel. Rec.*, did not wish to diminish the obligations which are incumbent upon individual churches in the suppression of feast days; nevertheless, since the erection of this distinguished collegiate church was subsequent to that law...

[*Latin ed. p. 600*]

600 THE SERVICE OF THE CHOIR. It seemed that those words did not comprehend the days suppressed, but rather the festive days of each year. A synopsis of the discussion. Certain things were brought forth by official documents, which showed what the mind of the Apostolic See was regarding the suppression of such feasts. It was noted, for example, that the Congregation of Sacred Rites, on May 23, 1798, declared that nothing should be innovated concerning ecclesiastical functions on such suppressed feasts. Pope Benedict XIV, having been asked several times about this matter, and specifically on September 1, 1745, when he had granted a dispensation to certain provinces of the Kingdom of Poland regarding a double obligation with the faithful, expressly added: "We do not intend" to innovate anything, either concerning the service of the choir, or concerning the celebration of the divine offices. Nor did the Most Holy Pope Pius IX act otherwise, who, on September 6, 1853, granting the reduction of feasts in the Kingdom of Sardinia, decreed: "With this, however, reduction of the days of feasts, we do not wish, and we command, that anything be innovated concerning the sacred Liturgy to be observed in the churches." Indeed, the same Supreme Pontiff, in the celebrated Encyclical of May 3, 1858, teaches that this has always been the mind of the Popes concerning the reduction of days of feasts. Thus, the pastors of the Catholic Church address the faithful: "Although Our Predecessors, the Roman Pontiffs, moved by the petitions of the Sacred College of Cardinals, and by the various and numerous needs of the faithful people, and by grave reasons of the times and places, have considered it fitting to diminish the number of obligatory feasts, so that these people might freely exercise their works of service on those days, without being obliged to attend Divine Service; nevertheless, the same Predecessors of Ours, in granting these indulgences, wished that the integrity and inviolability of the law remain intact, so that, namely, on those days, nothing should ever be innovated in the churches, concerning the order and rite of the divine offices, and that everything should be carried out in exactly the same manner as it was formerly done." Therefore, having considered the manner in which the Popes have acted, it seemed that, with the suppression of certain feasts, an exception was made to ecclesiastical law solely for the benefit of the Christian people. For in the concept of a feast day, two things are contained: one which regards the people, that

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is, freedom from servile labors, and the other, the sanctification of the day.

[*Latin ed. p. 601*]

SERVICE OF THE CHOIR. 601 There are two distinctions: one pertains to the laity, and the other to ecclesiastical matters, that is, the ministry of worship, and the divine offices, and especially the sacrifices to be performed with a certain rite and with certain solemnities. Furthermore, since the examples cited clearly show that the Indult was granted solely for the benefit of the people, it seemed to follow that the festive days, which are said to be suppressed, had truly and properly been restored to the churches. Therefore, it was concluded that, in the present case, the obligations imposed upon the Canons in the erection of the Collegiate church regarding the suppressed festive days should be understood not as if they were suppressed, but as if they were still in force in their original festive condition. With these and other considerations presented, the doubt was to be resolved: "Are the Canons of the Collegiate church of St. Andrew obligated to perform the choral office on festive days, even those that are said to be suppressed, in this case?"

RESOLUTION.—The Sacred Congregation of the Council responded on March 21, 1868: affirmatively.

WE COLLIGATE: I. Indults granted for the benefit of the Christian people, by which festive days are said to be suppressed, besides the obligations they remove, namely abstaining from servile works, or even hearing the Sacred Liturgy, do nothing else.

II. Therefore, in ecclesiastical language, festive days are called and are considered as such, and all that pertains to the divine worship and sacred ministrations is recognized as belonging to them.

[*Latin ed. p. 602*]

OFFICIAL ACTS OF THE PARISH. September 24, 1864, and November 26, 1864. Session. Chapter 1 of the Reform. Compendium of Benedict XIV. In the diocese of A., two parishes, along with their respective titles, were suppressed. From their goods, a single parish church was established, and it was raised to the rank of a notable collegiate church. The habitual care was entrusted to the Chapter, while the actual care was entrusted to two perpetual vicars, and also to as many coadjutors, removable at the will of the Chapter; this was done with the condition that the previous division of the people be maintained, and that each vicar have his own people whom he would govern. The vicariate, being under the Chapter (since the diocese was without its bishop), reported the following to the Holy Congregation: "Since two perpetual vicariates have been established as if they were one, and they have a single parish church, and a single principal rector, although the ancient distinction of the two peoples has been maintained, nevertheless, from the beginning until now, only one Mass has been celebrated for

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the people on feast days, alternately by the two perpetual vicars." Modern perpetual vicars maintain that, on the day when they are not obligated to celebrate Mass for the people, they can celebrate it in any church, even a rural one, provided that they have first fulfilled the duty of hearing the Sacramental Confessions. Therefore, a dispute arose between the vicars and the Chapter: the vicars, in fact, denied that they were both obligated to celebrate and apply Mass for the people, while the Chapter affirmed that such an obligation was incumbent upon them. Indeed, the canons, with a full vote, added the following article to the chapter constitutions: "Both perpetual vicars must, and are obligated, on all feast days, to celebrate Mass in the collegiate church for the benefit of the people." However, since one of the vicars would sometimes go to bless the houses before morning on the Saturday of the Holy Week, while the other would assist at the blessing of the baptismal font, another question arose from this point; and therefore, the canons added another article to the aforementioned constitutions, with these words: "On the Saturday of the Holy Week..."

[*Latin ed. p. 603*]

OF PAROCHIAL OFFICES. 603 "To the Holy Father, and to both perpetual Vicars, it is to be given that the Canon attends to the blessing of the baptismal font weekly." The questions, however, proposed by the Sacred Congregation of Councils, which are contained in the two formulas of doubt at the end, are as follows. The SYNOPTIC DISCUSSION: WHAT THE CANONS PRESENTED IN FAVOR OF THEIR POSITION REGARDING THE FIRST POINT. The Canons insisted in their arguments to show that both perpetual Vicars are bound to celebrate Mass on feast days in the collegiate church for the benefit of the people, even though one of them might be considered exempt from the obligation of offering Mass for the people alternately. The reasons by which they sought to demonstrate this are reduced to these: Benedict XIV, in the very erection of the collegiate church, granted to the Chapter, by Apostolic Letters, the power to establish whatever statutes, ordinances, chapters, and decrees, provided that they were lawful and honest and not at all contrary to the sacred Canons, and that they be examined and approved by the Ordinary of the place. And therefore, they concluded, the Chapter has the power to add to its constitutions whatever may contribute to the greater splendor of divine worship; and therefore, it can impose upon both Vicars the obligation of celebrating Mass on feast days for the benefit of the people. Furthermore, the Canons observed that while there is one parochial church, there are nevertheless two distinct peoples, and two pastors who care for their spiritual welfare; and therefore, both are bound to feed the people, and to build them up spiritually, as Barbosa notes in *ad Conc. Trid. sess. 23, cap. 14, de Reform.* Moreover, it would be for admiration, not for edification, if the pastor celebrated Mass on feast days, receiving a larger collection of alms, not in

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his own church, but in another's. The Canons maintained that both Vicars are subject to this obligation, even if one of them is only required to offer Mass for the people alternately; because the obligation to celebrate and the obligation to apply [the Mass] are different, as Barbosa says in *de Offic. et Potest. Paroch. par. 1, cap. II, n. 10*. Therefore, the Canons believed that the Vicars could not free themselves from this obligation, even if they were excused from the obligation of applying the Mass because of the unity of the parish, because of the distinction of the people. For this obligation is distinct from the obligation...

[*Latin ed. p. 604*]

OF PAROCHIAL OFFICES. The duty of providing spiritual nourishment proceeds from this, and where there are two congregations of the people, there ought to be two pastors present to nourish them. Furthermore, the Council of Trent, in Session 22, concerning observance and life in the celebration of the Mass, decreed that the people ought to be warned to frequently attend their parishes, at least on Sundays and the greater feasts; this prescription would be rendered useless if there were not a proper parish priest present in the parochial church, from whom the people might learn the efficacy and use of the Sacraments, and also, during the solemnities of the Masses or the celebration of the divine mysteries, sacred words and salutatory admonitions... should be explained in the vernacular language on each festive or solemn day, and these should be impressed upon the hearts of all, as the same Council, in Session 24, chapter 6, on Reform, prescribes. The Canons asserted that this was, in fact, the reason why Benedict XIV, in the Constitution *Cum semper oblatas*, permitted Bishops to grant to Vicars perpetual the faculty of receiving alms for Masses celebrated on festive days, but this was permitted to them under the condition that they celebrate in the very parochial church, for the necessary benefit of the people. From this, it follows that the obligation of celebrating on festive days for the benefit of the people is greater than the obligation of applying the Mass for the same purpose.

WHAT THE CANONS ALLEGED REGARDING THE SECOND DOUBT. Regarding the presence of Vicars at the baptismal font, the Canons noted that, according to the sacred Canons, all parish priests of filial churches ought to be present in the mother church when the sacred font is blessed; therefore, they concluded that all Vicars are, by a stronger right, bound to be present at this, when this sacred rite is performed in the collegiate church of the Vicars.

WHAT THE VICARS ALLEGED REGARDING THE FIRST DOUBT. The Vicars, on the contrary, responded with reasons contrary to those adduced by the Canons: although the distinction between the people is maintained, there is nevertheless one church, one parish, and one parish priest; and therefore, only one priest is bound on festive days to celebrate Mass for

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the people, and to apply it; moreover, the Chapter has the faculty of establishing statutes, but not those which would be detrimental to a third party; they demonstrated a distinction between the obligation of celebrating and the obligation of applying, but when one of them is not bound to apply the Mass, neither is he bound to celebrate.

[*Latin ed. p. 605*]

OFFICIAL PAROCHIAL MATTERS. 603 It pertains to the same collegiate church to celebrate [Mass] there, with the application of the Mass, and the celebration of the parochial Mass being prescribed by the Reverend Canons: Pope Benedict XIV granted this to Vicars who are in need, so that they may postpone the application of the Mass for the people within the week, but he did not permit the celebration itself to be postponed, so that the people might fulfill the precept of hearing Mass, and receive the word of God: and this [service] must be provided by him, and one Mass is sufficient; nor was this the intention of the Fathers of Trent regarding this matter, because they mention only one parochial Mass, not two or more. If, however, it seemed to the Canons that one Mass was not sufficient for the spiritual needs of the people, the same Vicars warned that the Canons themselves should consider the spiritual needs of the people, since all parochial goods have been assigned to the Chapter.

THINGS PRESENTED BY THE VICARS REGARDING THE SECOND DOUBT. — Regarding the attendance at the blessing of the baptismal font, the Vicars stated that another Vicar was absent because he was about to undertake a long journey to bless the homes of the parishioners scattered throughout the countryside, and therefore he should be considered legitimately excused. With these reasons explained on both sides, some things were added from the office. It was observed in the present case that the union of parishes was being dissolved, and that there was only one Parish Priest established in it, namely the Chapter to which the habitual care was entrusted, and those who exercise the actual care are not Vicars of multiple priests, but only of one. Furthermore, since each Parish Priest is obligated to celebrate and apply a Mass for the people on feast days, it seemed to follow that the Vicars, who were fulfilling the duties of one Parish Priest, should be obligated to celebrate only one Mass in the collegiate church. And in this sense, the Holy Congregation has resolved similar controversies on several occasions. In the case of Ripatransone concerning parochial rights, on November 20, 1762, regarding the actual care of souls of one and the same church, which was entrusted to the Provost and the Beneficiaries, the following decree, confirmed by the Holy Congregation, is given: The Provost, as well as the Beneficiaries, must publicly teach Christian doctrine at the prescribed times; and they must alternately celebrate and apply the

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parochial Mass; and he who celebrates must explain the Gospel.

[*Latin ed. p. 606*]

606 OF THE OFFICES OF PAROCHIAL CHURCHES. In Nusco, January 17, 1756, a doubtful matter was proposed: "Whether the Canons of the Collegiate Church of Saint Mary of Plano... are bound to celebrate one Mass for the people on feast days, or rather, as many Masses for the people as there are parishes, in that church united to them?" The response that came forth was: affirmative to the first, negative to the second. In Balneoregion, the parochial Mass of August 19, 1713, recorded in the treasury of the year 1740, concerning doubt VII: "Whether it suffices for the Canons who are Curates to celebrate a Mass on feast days, and to apply it for the people, or rather, whether both Canons who are Curates are bound to apply their aforementioned Mass?" The response was: "One celebration and application suffices." These, and other similar matters, were resolved in the following doubts. I. "Whether each perpetual Vicar is bound to celebrate Mass in the parochial church for the people on all feast days, and to apply it in that case." II. "Whether each perpetual Vicar ought to be present at the blessing of the baptismal font in that case."

RESPONSE. The Sacred Congregation of the Council, on September 24, 1864, judged it fitting to respond: To I, negatively. To II, it is to be proposed again.

PROCEEDINGS CONCERNING THE SECOND DOUBT. — Since the Sacred Congregation ordered that the second doubt be proposed again, the following, by official decree, were added to the new proposal of this doubt. Benedict XIV, *Instit. eccl.*, 1, n. 1, recounting the history of this sacred rite, and its most ancient origin, states that it has been declared not once, but many times, by the Sacred Congregations, that the Canons and all Clerics who are attached to the cathedral church ought to be present at the blessing of the baptismal font; in other churches, however, the Parish Priest and other Priests and Clerics attached to those churches are bound to be present, as also taught by Braschius in the *promptuaria synodalis*, chapter 5, n. 29. Cardinal Petra, in the *Constitutiones Apostolicae*, vol. 3, *const. Inn. IV*, section 1, n. 19, in which this author recounts that the Sacred Congregation of the Council, in the case of Savona, on November 17, 1691, responded that Parish Priests in cathedral churches to which they are subject, ought to be present.

[*Latin ed. p. 607*]

OFFICIAL PAROCHIAL MATTERS. 607 The solemn consecration of the baptismal font, which is renewed annually, is found in Book 41 of the Decrees, page 296. Therefore, in the present case, both Vicars seemed to be obligated to attend the consecration of the font, especially since, according to the Ritual, on Holy Saturday, the blessing may not be administered with

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any water other than that drawn from the font itself before the infusion of the chrism, as the Ritual states: "The Parish Priest, or another Priest, with a minister carrying the vessel of water, taken from the blessing of the fonts," should visit the homes of his parish before the infusion of the chrism. From this, the Commentary of Catalanus on the Roman Ritual, part 2, chapter 4, condemns those Parish Priests who, on occasion of the vastness of cities, dare to anticipate the blessing. For this task, in large parishes, the Parish Priest can be assisted by other priests who offer their help, as the Roman Ritual also indicates in the aforementioned words; and likewise, St. Charles Borromeo, in the Sixth Provincial Council, letter ele, mentions the sacramental, and the practice that prevails in the esteemed City supports this usage. With these observations regarding the second question, and since the Canons again requested that the first question also be considered, the first question was also presented again, using the customary formula for raising doubts. Furthermore, the Canons noted that it is for the benefit of the people that there should be many Masses in the parish church on feast days, since on those days there is a greater attendance of the faithful, and it seems inappropriate that the one who cares for souls, and who perhaps celebrates daily in his church, should be absent on Sundays and other feast days, perhaps to celebrate Mass elsewhere for greater profit. Therefore, the following questions were again raised: I. "Should one adhere to, or depart from, the decisions made in the first question in this case?" II. "Must both Vicars be present for the perpetual blessing of the baptismal font in this case?"

RESOLUTION. — The Sacred Congregation, having considered the matter under examination on November 26, 1864, decided as follows: 1. In accordance with the previous decisions, and nothing more. 2. Affirmative.

[*Latin ed. p. 608*]

608 OF PAROCHIAL OFFICES. From the Collections: I. The union of parishes, whether complete or partial, does not impede the distinction of the people who previously belonged to separate parishes. II. Indeed, this distinction is not impeded, even if, for the number of people, permanent vicars are appointed who represent the titular parish priest. III. Therefore, with only one parish remaining, there is also only one obligation to celebrate Mass on feast days, and to apply that Mass for the benefit of the people, an obligation which can be fulfilled by vicars taking turns. IV. Furthermore, it is not necessary for the parish priest to perform the blessing of houses on Holy Saturday before blessing the baptismal font, from which blessed water must first be taken. V. The inconvenience arising from the size of the parishes can be addressed by other priests who can assist the parish priest in this ministry. WILL OF COMMUTATION. On June 27, 1863. Summary of donations. Pius, the testator, dying without children, left his entire estate to his wife, so that the wife would have the usufruct of all the

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goods as long as she lived; but upon her death, a church endowment (1) would be established from the entire estate in the archpriestal church of the town of A. He stipulated that a chaplain should be appointed by the episcopal curia, and that priests from his own family should be preferred in such appointments. He also ordered that the chaplain should provide assistance to other priests in the aforementioned archpriestal church in the performance of sacred functions, and that he should celebrate Mass four times a week, etc. (1) See Appendix XXII, in which the distinction between a church endowment and a lay endowment is explained.

[*Latin ed. p. 609*]

COMMUTATION OF THE WILL. 609 Scarcely had news of such a disposition reached the testator's brother, sister, and two nephews of the deceased, when all of them, laboring under the most grievous poverty, sought refuge with the Supreme Pontiff, so that they might obtain some portion of the inheritance, a request to which the testator's widow gave her support. After the widow's death, prayers were presented to the Sacred Congregation; and the Bishop, who commended the prayers of the petitioners, also suggested that a chaplaincy be established from the remainder of the inheritance, in some way united to the meager benefice of the Archpriest Parochial, so that the parish, having been vacant for nearly two years due to the scant income, might be filled; he added, furthermore, that all families legally entitled should willingly renounce their right to such entitlement. It was observed that two things were being requested in this present petition, namely, first, that some assistance be granted to the petitioners, who were closely related to the testator by blood; and second, that, with the right of entitlement waived in favor of the testator's family, a chaplaincy be granted to the Archpriest Parochial. WHAT FAVORED THE PETITIONERS. Two individuals were favored by the petitioners, to whom they seemed worthy of grace, namely, their close blood relationship to the testator, and their true poverty. Furthermore, it was observed that the Sacred Congregation is wont to grant such grace when these two conditions are present together, guided by canonical equity. Lambertin, *De jure patronato*, I, 3, q. 2, art. 3, n. 8; Reiff., * /. 3*; *Decretor*, t. 38, n. 15. WHAT OBSTACLED THE PETITIONERS. However, it was observed that the recent will of the testator, in which the poverty of his relatives was certainly not unknown, presented an obstacle; therefore, the presumption upon which canonical equity is usually based vanished, namely, that the testator would have disposed of his goods in a different manner if he had not been ignorant of the poverty of his relatives! WHAT WAS TO BE CONSIDERED REGARDING THE SECOND PART OF THE PETITION. It is established by law that the last wills of the deceased are to be observed in all things, so that they should not be altered for the better. However, when just causes are present, the Roman Pontiff sometimes grants a commutation of the will; especially when, for an

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essential part, the execution of such a will is hindered.

[*Latin ed. p. 610*]

Concerning the COMMUTATION OF TESTAMENTS: It is decreed that those whose interests are involved should not be hindered, and that more suitable or easier means should be sought for the public good, or for the salvation of souls. The Sacred Congregation of Councils, residing in Fermo, on December 15, 1770, in the matter of the commutation of testaments, on May 8th and 29th, 1756, stated: "Such a dispensation appeared to be required with greater reason, since the derogation of the testator's will, which was sought, would primarily yield to the same work which the testator had ordered to be carried out, etc."

RESPONSE: The Sacred Congregation of Councils, on June 27, 1863, decided to respond negatively and furthermore.

FROM THE ABOVE, WE GATHER:

I. The will of the founders must be considered the supreme law and is to be observed.

II. However, sometimes, due to grave and canonical reasons, the same will may be derogated from by the Supreme Legislator, the Roman Pontiff.

III. In the present case, such reasons are not present.

IV. Nor does the consent of those whose interests are involved provide any reason for derogating from the aforementioned will, when such a derogation would cause prejudice to their successors.

REGARDING THE APPOINTMENT: On February 18, 1860, the Archbishop granted the office of Vicariate General to the Priest A, a Canon and Penitentiary. However, he relinquished only the office of Penitentiary, retaining the appointment of Penitentiary. After obtaining an indult from the Holy See for the derogation of the law, this office of Penitentiary was conferred upon another Canon, B, of the same metropolitan chapter. When the Priest A died, who was also the General Vicariate, the new Archbishop was faced with a dilemma: whether or not the office should be considered vacant.

[*Latin ed. p. 611*]

REGARDING THE BENEFICE ASSIGNED TO THE PENITENTIARY. 611. Concerning the benefice assigned to the Penitentiary, it should be considered as a simple benefice that is vacant, so that the office of Penitentiary should remain firmly attached to the benefice, even though the actual Penitentiary Canon, B., retains it. It was noted that, according to the prescriptions of the Council of Trent, Session 5, Chapter 1, and Session 24, Chapter 8, concerning ecclesiastical goods, a proper benefice with the office of Penitentiary was to be found in that church. This was gathered

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from the reports concerning the state of that archdiocese, which are preserved in the records of the Holy Congregation. Furthermore, it was noted that in the aforementioned Indult of derogation, no word could be found from which it could be understood that the Canon A. had been granted the faculty of retaining the benefice, even though he had relinquished the attached office. With these things noted, it was observed that, in law, it was not disputed, and that the Holy Congregation had defined this on several occasions, as can be seen in the Vicentina Option of January 31, 1852, that it is not permissible for a Penitentiary, even as a Theologian, to retain a benefice to which the office itself is perpetually and inseparably attached; and therefore, it seemed to be wrongly done that the office of Penitentiary, having been relinquished by one, should be conferred upon another without that benefice which was attached to it and which, by its very nature, ought to be added to that office.

RESPONSE. The Holy Congregation of Councils considered it appropriate to respond on February 18, 1865: The benefice assigned to the Penitentiary which was retained by the Canon (A.) pertains to the Canon Penitentiary (B.); therefore, this benefice is vacant. FROM WHICH IT MAY BE GATHERED: I. The office of Penitentiary cannot be separated from the benefice assigned to the Penitentiary. II. Why, therefore, he who rightfully obtains the office of Penitentiary from another, should be considered to also possess the benefice assigned to the Penitentiary.

[*Latin ed. p. 612*]

612. DISPENSATION FROM IRREGULARITY. January 28, 1865. Summary of petitions. The Archbishop N. transmitted a request from the Most Holy Father, asking that he might graciously grant a dispensation from the irregularity concerning Lawrence, a cleric of his diocese, who, through a chance occurrence, had lost the use of the index finger of his right hand; he was, moreover, requested through the Sacred Congregation [of Rites] to more precisely report, after the usual experiment (1) had been completed, whether the aforementioned cleric was able, without any danger of irreverence or astonishment, to perform all the actions required in the Sacred Office, and especially in breaking the sacred Host and elevating the Chalice; new information was transmitted by the Archbishop, and a favorable testimony from the Masters of the Ceremonies was also sent, again requesting the same grant of dispensation. From this testimony, and from the information received, the following could be deduced: namely, that Lawrence had lost almost the entire first two phalanges of the index finger; that he could, conveniently and without any danger of irreverence or astonishment, hold and break the sacred Host, and also receive and elevate the Chalice; that he could not distribute the Holy Communion with the same finger, but that without any inconvenience, he could substitute the middle finger, and use it very easily in all matters pertaining to the

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Sacred Office. Finally, the Archbishop commended the petitioner, stating that he had devoted himself to the study of philosophy and theology for many years, not without merit, and that there was hope that he would die having faithfully and piously performed his priestly duties. Furthermore, the cause for the dispensation was supported by the lack of priests in his diocese. Some observations were made afterward, namely, that the Sacred Congregation seemed to be more reluctant to grant such dispensations when dealing with a petitioner being promoted to the Orders, than when dealing with someone already ordained; however, the defect with which Lawrence was afflicted did not seem to be of such a nature as to greatly impede the proper performance of the Sacred Office. Since he could, without any deformity, substitute the middle finger for the missing index finger, and since he appeared to be in a proper ecclesiastical condition, and gave hope of becoming a useful member of his diocese, there seemed to be a just reason for granting the requested dispensation. (1) See page 88 and following.

[*Latin ed. p. 613*]

DISPENSATION FROM IRREGULARITY. 613 The Sacred Congregation, having considered similar circumstances, responded that the grace of dispensation should be granted to clerics, if it pleased the Most Reverend [Bishop], in the documents of Cameracensis, February 17, 1821, in Lucien, December 20, 1823, and in Lucana, November 19, 1825.

RESPONSE. The Sacred Congregation of the Council, in a meeting held on January 28, 1865, decided that, concerning the grace of dispensation, the proper means is to use the instrument of dispensation itself, rather than an indication.

FROM THE SACRED CONGREGATION OF BISHOPS AND REGULAR CANONS.

REGARDING ECCLESIASTICAL BENEFICES.

September 7, 1862.

March 17, 1865.

January 19, 1866.

Case: Rosa, having married Silvester, possessed, in addition to her dowry, certain properties not included in the dowry. Consequently, when she made her will (the tablets of which are lost, and it is uncertain whether they will ever be found), she bequeathed to her husband, Silvester, that he should provide for the establishment of two ecclesiastical benefices from her properties not included in the dowry: one in the Diocese of A, and the other in the Diocese of B, attached to the Church of Saint Valentine, under

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the title of Saint Mary of Lauretana. (The present question concerns this second benefice; not at all the first.) Subsequently, in testamentary codices dated September 11, 1614, Silvester reserved the right for himself and his successors to appoint a chaplain; then, in other testamentary codices dated September 13, 1615, he permitted the same husband to freely retain the usufruct of the properties which were to be used to establish the ecclesiastical benefices, as long as he lived. Silvester, having demanded the execution of his deceased wife's instructions, reserved the right of patronage for his family; and, furthermore, by an act dated September 29, 1624, he assigned the properties with which the ecclesiastical benefices were endowed.

[*Latin ed. p. 614*]

614. CHAPLAINCIES. It was necessary to increase [the endowment], and a certain annual celebration of Masses was imposed upon the Chaplain. Besides those acts, of which we have expressly made mention, the other events concerning this Chaplaincy, up to the year 1668, and during that period, occurred in such a way that neither the original document nor a copy could be found. In that year, namely 1668, as it was ascertained from the records of the Episcopal Chancery, canonical bulls of institution had been granted by the Bishop to a certain priest. Subsequently, after another vacancy, it was established from the same Chancery that a favor had been granted to another priest on the 1st of [month not specified] 1698. After these events, nothing else was found, except the name of the Chaplain and the presentation before the Bishop, which was completed in the year 1731 by the patron, and the Bishop's edict, by which the vacancy of the Chaplaincy was publicly announced. But, contrary to this (as I shall now proceed to narrate, in chronological order, the events that occurred concerning this Chaplaincy), when, in the year 1754, the hereditary property of the patron's family was divided among the children, the property of the Chaplaincy was included in the instrument of division, just as if it were part of the hereditary property, and was assigned to one of the aforementioned children, who was to be considered the Chaplain, with the obligation of celebrating the Masses of the Chaplaincy attached to it. Many years later, and specifically in the year 1781, that child, to whom the property of the Chaplaincy belonged, freely exchanged a certain piece of land belonging to the Chaplaincy with a piece of land belonging to the Tithe, and in the records of the instrument, the Chaplaincy was expressly designated as a purely lay property. Furthermore, in the year 1794, another division of property took place among the children of the family, who were then in possession of the property of the Chaplaincy, and these properties were assigned to one of the children, who was a layperson, although among the same family children, two ecclesiastics were included. These properties were treated as lay property, or at least as constituting a lay Chaplaincy,

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and remained with the patron's family until the year 1846, when, after a vacancy in the Chaplaincy, and with some observations made regarding the restoration of the ecclesiastical nature of the Chaplaincy, a Chaplain was nominated by the patron's family, and who, also from the same family, was not lacking in clerical status and canonical age, did not refuse to solemnly receive the canonical bulls of institution from the Episcopal Curia, and to enter into canonical possession of the Chaplaincy, in the same manner as in...

[*Latin ed. p. 615*]

CHAPLAINCIES. 615. It is customary for benefits to be conferred as chaplaincies. In some cases, after a number of years, the chaplain, having laid aside his clerical attire, either having entered into marriage or intending to do so, presented a petition to the Sacred Congregation of Bishops and Regular Canons, in which he maintained that the chaplaincy should be considered a lay benefice, and that he, through youthful inexperience and ignorance, had accepted the canonical institution, and therefore requested that "the aforementioned chaplaincy be declared to be a mere lay benefice by decree of the Sacred Congregation." After the usual requests were made to the Bishop, so that he might indicate all necessary information and express his opinion, a response was received entirely contrary to these requests, from which it was evident that the records kept in the episcopal chancery, of which we have spoken, clearly indicated the ecclesiastical nature of the chaplaincy. Since the chaplain persisted in asserting the lay nature of the chaplaincy, and after warnings were given to the parties involved, the matter was brought before the plenary session of the Sacred Congregation for judgment. A learned discussion ensued.

WHAT WAS PRESENTED TO DEMONSTRATE THE ECCLESIASTICAL NATURE OF THE CHAPLAINCY. Two main points were presented to demonstrate this. The first concerned the facts of the case; the second established that, in four distinct instances, the chaplaincy had truly been held as an ecclesiastical benefice, namely in the year 1668, and then again in the year 1698, when the canonical institution was issued by the Curia; also in the year 1731, when the patron family initiated the act of nomination and presentation, and the Curia publicly announced the vacancy of the chaplaincy; and finally, in the year 1846, when the Bishop of the time granted the chaplaincy to the aforementioned Orator as an ecclesiastical benefice. However, the documents presented by the Orator, which concerned the period from the year 1754 to the year 1794, were not of such significance as to undermine the force of the arguments in favor of the ecclesiastical nature of the chaplaincy, which were based on the records kept in the Curia; rather, they indicated an appropriation made by the patrons. And if the decree of canonical erection were not found, it could not therefore be said that the place had not been established; for it

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is one thing for something not to be found, and another for it not to have existed.

[*Latin ed. p. 616*]

616 'CAPELLANCIES'. Indeed, how could the canonical bulls of institution and other acts pertaining to the establishment of benefices have been carried out at a time so close to the foundation, unless the canonical erection, even if no trace of it is found, had truly been perfected by the Bishop according to canonical laws? Furthermore, another Capellancy, established by the same Testator in another diocese, under the same terms and conditions, as we have seen above, has always and without contradiction been considered an ecclesiastical institution, and ecclesiastical chaplains have been appointed to it through canonical institution. Given that the canonical erection of the Capellancy was not lacking, and that the canonical bulls of institution were issued, it necessarily followed in law that the Capellancy in question should be declared to be ecclesiastical. For it is known among interpreters of Canon Law that two conditions are required as essential for establishing the ecclesiastical nature of a benefice: one is that a decree of episcopal canonical erection must have been issued in the foundation of the Capellancy; the other is that canonical bulls of institution must be issued in the collation of the Capellancy. There are also other conditions which canonists enumerate; but these may also apply to lay Capellancies, and if they are omitted, they are disregarded. But the decree of erection, and the issuance of the bulls, are such that they apply uniquely to a benefice, such as an ecclesiastical Capellancy. These statements are supported by the authority of the most learned Reiffenstuel, *lib. 3, tit. 5, n. 17*, and by the *Sacra Congregatio Episcoporum et Regum* in the case of the Capellancy of *Aesina*, July 18, 1851. Therefore, since these two essential elements were demonstrated to be present, it was concluded that the Capellancy in question could not but be declared to be ecclesiastical.

ARGUMENTS TO BE CONSIDERED FOR THE LAY NATURE OF THE CAPELLANCY.

Maintaining the same line of reasoning in fact and law, with respect to the first point, all the acts were presented which had been carried out since the year 1754 throughout the course of the century, in which the Capellancy had not only been considered as lay, but had also been expressly designated as such, without the Episcopal Curia having raised any complaint to defend its rights during so long a period of time. And since the Capellancy in the other diocese established by the Testator was considered to be ecclesiastical, this could not...

[*Latin ed. p. 617*]

CHAPLAINCIES. 617 It was the case; for it could have happened for sev-

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eral reasons: for it is not rare that lay chaplaincies are elevated to ecclesiastical status, with the necessary conditions being observed. Furthermore, it could not be denied, if the ecclesiastical court had transferred it to the same hands; this occurred because the chaplain, having been appointed in his youth, was unaware of the effects that the issuance of bulls would produce: but when he first realized this, he did not remain silent, but rather sent his protests first to the Episcopal Curia, and then to the Sacred Congregation of Bishops and Regular Canons. With these facts established, the same arguments were invoked in law, which had previously been presented both in favor of ecclesiastical status and in favor of lay status. Since the decree of erection was not produced, it should be presumed that it was completely lacking; and this all the more, since for the course of an entire century, a chaplaincy had been conferred and peacefully held by a chaplain without the issuance of episcopal bulls. Therefore, if a chaplaincy should be called lay at that time, when in its very foundation there was no decree of erection, and in its assumption of possession, no episcopal bulls were issued, then it must be declared, without any doubt, that the chaplaincy in question was not ecclesiastical, but truly lay. *Ius.* "How and in what way can it be determined whether a chaplaincy is lay in this case?" RESOLUTION. — On September 19, 1862, the Most Reverend Fathers of the same Sacred Congregation of Bishops and Regular Canons responded. The evidence was presented and considered. PROCEEDINGS IN THE CASE. In the second proposition of the case, nothing new was presented by the Curia, either in fact or in law, to establish the ecclesiastical status of the chaplaincy: if one considers the facts, nothing was presented by the advocate to demonstrate lay status, except that he had the vote of the Advocate of the Roman Curia, who, relying on the documents already presented by the same advocate, confidently concluded that the chaplaincy established by Rosa, the witness, should be declared lay. Therefore, the same question was again proposed to the Most Reverend Fathers, and the response was: "The vote of the Promoter of Justice of the Curia shall be presented and examined, after the submission of copies of all documents."

[*Latin ed. p. 618*]

618 CHAPLAINCY... which, with reference to the present question, are preserved in the Episcopal Archives. DEFINITION OF THE CAUSE. The Bishop proceeded, and, among other things, submitted copies of the bulls of the years 1688 and 1698, and the act of nomination of the year 1731, of which we have already spoken. Subsequently, the Promoter of Justice submitted his opinion, vigorously defending the ecclesiastical nature of the chaplaincy, after presenting a careful history of all that had occurred concerning said chaplaincy from its very origin to that time. He particularly alluded to a circumstance previously not fully explained to the Holy Congregation, namely, that if the entire series of acts from its foundation to

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subsequent times could not be presented without interruption, it was necessary to consider this, because in the past century, the episcopal archives had suffered a devastating fire, as a result of which all the acts preserved therein had been lost. After a diligent examination of the copies transmitted by the Curia, it was found that in the act of nomination made in the year 1731, the Patron had carried out the nomination and presentation using these very words – in the form of the instrument of erection of said chaplaincy. Therefore, I observed that even if a copy of the decree of erection could not be found, nevertheless, in the act of nomination, there was a document that could not be denied, which demonstrated that it had not been lacking in its foundation. Since it was shown from the acts of 1668 and 1668 that, at the time of its foundation, the sending of episcopal bulls had taken place, it legitimately followed that the two essential elements of the benefit, or of the ecclesiastical chaplaincy, were in no way lacking, and therefore, there was no doubt that the chaplaincy should be considered ecclesiastical. Given these circumstances, since the doubt, which we have written above, had been proposed for a third time, the Eminent Fathers did not hesitate to respond on January 19, 1866: "Negatively in all respects." From this, we gather: I. That there is a great and substantial difference between lay chaplaincies and ecclesiastical chaplaincies (1). (See Appendix XXII).

[*Latin ed. p. 619*]

CHAPLAINCIES. 619. Ecclesiastical chaplaincies are distinguished from true benefices only in name. III. The decree of canonical erection at the foundation, and the canonical institution bulls at the collation, are two essential solemnities or conditions which pertain to a true benefice, and therefore to ecclesiastical chaplaincies. IV. Therefore, it cannot be said that a chaplaincy is "lay" simply because it is subject to the lay patronage. For even benefices are subject to lay patronage, and nevertheless, if the decree of canonical erection and the issuance of the institution bulls are lacking, they do not cease to be true benefices. V. Other conditions, besides the two mentioned, such as the reservation of patronage, and other similar matters, can pertain to both lay and ecclesiastical chaplaincies.

DECIMES. On March 4, 1864. Summary of the case. The Regular Monastery N. possesses certain lands, or fields, subject to certain burdens, namely, the obligation of paying tithes in favor of the Canonry A., and also a smaller tithe called "Quartese" in favor of the parochial benefice B. By a lease agreement, the Monastery leased part of these properties to the military authority, so that soldiers might carry out field exercises on these lands. Since nothing was mentioned in this contract regarding the burdens of tithes and the Quartese, the Canon A. brought the Monastery before a lay judge (although he noted that this judge was not competent) to demand the payment of tithes for three years. The Canon was unsuccessful

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in this lawsuit; therefore, he appealed to a higher lay tribunal, which fully confirmed the judgment of the first instance. As a result, nothing more was paid, either as tithes or as the Quartese. In the renewal of the contract, and in the extension of the same contract to other lands or fields, the Abbot of the Monastery obtained confirmation.

[*Latin ed. p. 620*]

620. DECIMAS. With the intervention of Apostolic authority, [the matter] was brought before the Bishop, who desired that the rights of the tithes and the "Quartese" be preserved. However, since the Monastery considered that the burden of satisfying these obligations did not pertain to it, but to the military authority with which the Monastery had previously entered into a contract, the question was referred to the Apostolic See. The Bishop, therefore, proposed the following questions: I. Whether the Monastery of N., notwithstanding the two aforementioned opinions, by which it was excused from these obligations, is bound to pay the tithes and the "Quartese" to the Canon and to the parish benefice, in proportion to the land leased, from the money it receives from the military treasury. II. Whether, in a renewed and extended contract for other lands, in order to increase the area for military purposes, these lands are also to be burdened with the obligation of tithes and the "Quartese" in the manner mentioned above. The Sacred Congregation of Bishops and Regular Canons, on July 29, 1863, wrote to the Bishop, instructing him to ensure that an agreement be reached between the parties, and to transmit it to the Sacred Congregation for approval. Furthermore, it stated that, if such an agreement could not be obtained, the same Bishop should grant the Monastery the possibility of entering into the contract, but with the understanding that the respective rights of the tithes and the "Quartese" be preserved, as is and to the extent that they are legally due. After such an injunction, the Canon and the Parish Priest presented their rights before the Sacred Congregation, while the Monastery added nothing to what it had already presented to the Sacred Congregation. The question was therefore presented with a doubt, which we place at the end, as is customary.

A SYNOPTIC DISCUSSION.

I. ARGUMENTS PRESENTED IN FAVOR OF THE CANON AND THE PARISH PRIEST.

The Bishop, in the writings which he sent to the Monastery, pointed out that the tithe is a part of the fruits or revenues which are due to the Church, etc. If the tithes are of land, they must be paid by the owner of the land. If the land has been leased, the tithes must be paid by the lessee; because the lessee represents the lessor in this case, who has granted the right to

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the fruits, retaining for himself the contribution, taking into account the burden that falls upon the lessee of paying the tithes.

[*Latin ed. p. 621*]

DECIMA: The tithe, in the first instance, applies to the immediate produce; in the second instance, to the land itself. Therefore, if a lessor leases land to another, knowing that the land will yield a return, he must ensure that the right of the tithe-collector is preserved regarding the buildings and the land. Consequently, if the lessor, when leasing land, does not mention the burden of tithes that weigh upon the land, and thus contracts as if the land were free from any burden, he would be committing a grave injustice, which is proper to the tithe-collector.

These principles, the Bishop applied to the present case, considering that the revenues which the Monastery received from this leasing of land, and other proceeds from the felling of trees, from the right of pasture, could be considered as natural fruits. Therefore, the Monastery was obligated to pay the aforementioned tithes. Furthermore, the praised Bishop added that, according to a moral and legal principle, no one should become richer at the expense of others; the Monastery would become richer at the expense of both tithe-collectors if it were exempted from this burden, and it could even happen that, if the lease contract of which we are speaking were prolonged for a long time, the Church would be left without these tithes.

Therefore, having established this principle, that the right of tithes applies immediately to the produce, and mediately to the land, the Monastery is obligated to lease the land to those who can pay the customary tithes from the produce; cap. in aliquibus 32 de Decimis. Otherwise, the Monastery itself, by paying the tithes from its revenues, will be obligated to compensate the tithe-collectors.

In the present case, however, since the land had been leased to soldiers for the purpose of military exercises, and therefore should be considered uncultivated, any collection of produce would be physically impossible. The Bishop noted that, with regard to the two aforementioned judgments, the lay judge was incompetent in the judgment in question, both in terms of the cause and in terms of the persons; and that even if that judge were considered competent by the facts, that double judgment could not extend to a new contract by which other lands burdened with the tithe were to be leased.

The Canon and the Parish Priest, in agreement with these arguments, presented reasons, concluding with this dilemma: either the Monastery receives a price equivalent to the fruits of the land, or it does not. In the former case, it is not just for it to retain...

[*Latin ed. p. 622*]

622 OF THE DECIMES. Concerning the price of the decimes: in another

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case, however, an undue payment would have been made to the lessee, to the detriment of a third party, equivalent to the value of the produce.

THINGS BROUGHT FORWARD IN FAVOR OF THE MONASTERY. The Monastery maintained that the right to collect the decimes pertains only to the produce of the land, which is burdened by the obligation of the decimes; and that these decimes are due from the produce actually yielded by the land, and not from that which it might potentially produce. From this, it follows that the obligation of paying the decimes falls upon him who receives the produce of the land. Furthermore, in the present case, the land, through the aforementioned lease, has come to a situation where it no longer produces natural fruits. Therefore, there is no object upon which the right to collect the decimes is based. It cannot be argued that the price of the lease represents the produce, for since the land is not subject to cultivation, it does not exhibit produce that can be represented by an equivalent price.

THINGS WHICH WERE OBSERVED EX OFFICIO. It was pointed out ex officio that a lay judge is entirely incompetent to judge spiritual causes, according to Canon 1, distinct. 96, cap. "decernimus" 2, concerning Judgments. Furthermore, causes concerning the decimes are numbered among spiritual causes, as is argued in cap. "Exhibita" 9 of the "Rev. perm." of Ferraris, under the word "Decima," article 5, number 16. Therefore, when it is a question of the right to collect the decimes, judgment cannot be rendered except by an ecclesiastical judge, as Ferraris states in the aforementioned passage. However, when it is a question of the possession or quasi-possession of the right to demand the decimes, the judgment likewise pertains to the ecclesiastical judge, as taught by Benedict XIV in "de synod, dioeces." I, 9, chapter 9, where he states: "The common doctrine of the Doctors, founded on common law, holds that disputes arising concerning the possession or quasi-possession of a right annexed to a spiritual matter; and arising from it, such as the possession of demanding ecclesiastical decimes, are no less than disputes concerning property, and are settled in the ecclesiastical tribunal." Although, in some places, by Apostolic privilege, or by a long-standing custom tolerated by the Church, it has been introduced that causes concerning the decimes are settled in a possessory court, before a lay judge, as Benedict XIV states in the aforementioned passage, nevertheless, it did not appear that such a privilege, or tolerated custom, was in force in that Diocese.

[*Latin ed. p. 623*]

DECIMES. 6 2 3 Having considered these matters, certain principles of doctrine were presented, which, although they did not resolve our question, seemed to shed some light upon it. For, no similar case could be found whose decision might appear applicable to the present question. Therefore, the doctrine transmitted by Cardinal De Luca concerning tithes, in *Dispu-

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tationes de Decimis*, 21, was brought forward. In this work, distinguishing several cases in these difficult questions, he teaches, among other things, that there is a great difference between a universal tithe collector, such as a parish priest who has a right founded in law (1), and a particular tithe collector. For, when the tithe collector is particular, he can only claim the tithe on the fruits to the extent that he demonstrates possession or prescription, and therefore the extension or subrogation does not apply. On the contrary, if the tithe collector is universal, such as is presumed to be the case with a parish priest, then if the cultivation of the land changes, the universal tithe collector's right is extended to the new fruits of the land; whereas, on the other hand, the particular tithe collector does not extend his right beyond certain fruits, according to the rule that he only has a right to the extent of possession, and therefore not in all cases. Therefore, subrogation is not real in all cases, because truly, he does not have a right. It was also observed that when a titheable property is leased or granted in emphyteusis, generally the lessee and the emphyteuta are obliged to pay the tithes, according to the text in chapter 24 concerning tithes. *Piring, Init. can. Z. 3, i, 30, n. 48; Reiff, ibid. tit., n. 58.* For this burden follows the possessors, as stated in the final section of chapter 6. Furthermore, in *Rota coram Ansaldo*, decision 207, n. 16, it is stated concerning tithes. Therefore, it will be the duty of the lessee or emphyteuta to deduct something from the contract by stipulation, on account of this burden which weighs upon the land, which, if (1) "To have an intention founded in law" is a certain way of speaking used by jurists to indicate a presumption, which arises from the law itself in favor of a person because of some quality of that person. Thus, it is said that a parish priest has an intention founded in law concerning the collection of tithes, where such a right of tithes is in force; because, simply by being a priest, he is considered to have a universal right within his parish to collect tithes. From this legal presumption, it follows that the burden of proof that he has not paid the tithes rests upon him, who claims to have been exempted from this burden, either in whole or in part. Similarly, when dealing with jurisdiction, the Bishop is said to have an intention founded in law in his diocese, because, simply by being a Bishop, he is considered to have jurisdiction over the entire diocese. Therefore, it will be the duty of an Abbot, who believes himself to be exempted, either in whole or in part, from the Bishop's jurisdiction, to demonstrate his exemption.

[*Latin ed. p. 624*]

624. TITHES. If a lessee, tenant, or other person receives a piece of land as if it were free and unencumbered, they shall have a recourse against the owner of the land, as justice demands. Furthermore, the text brought forward by the Bishop was considered, namely, Chapter 32 concerning Tithes, which reads as follows: "In some regions, certain people are mixed together, who, according to their own rites, do not customarily pay tithes,

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although they are considered to be of the Christian name. Some landowners, therefore, grant these tithes to be cultivated, so that those who defraud the churches of tithes may obtain greater profits. Therefore, wishing to provide for these indemnities for the churches, we decree that these landowners shall entrust their lands to those individuals, and in such a way that their lands may be cultivated, so that the churches may receive the tithes with integrity, and if it is necessary, they shall be compelled to do so by ecclesiastical censures." Gonzalez, in his commentary on this chapter, notes that the faithful of the Greek rite have not customarily paid tithes, which is why it is justly and rightly established in the present chapter that landowners should lease their lands to those individuals from whom tithes are customarily paid, that is, to other Latin faithful who have always paid tithes. Furthermore, this section of the law provided an opportunity for a certain controversy, as indicated by Fagnanus in chapter 19 of *Officii et Polestie Indictorum*, between the Archbishop of Angers and Regular canons exempt from paying tithes by Apostolic privilege. Moreover, as Fagnanus himself states, "this chapter does not prohibit alienations to exempt persons: but only that lands subject to tithes should not be leased to those who did not pay tithes according to their rite and custom, that is, according to a wrongful practice." With these and other considerations in mind, the question was raised: "Whether and how, and at whose expense, the tithe and the *Quartese* are to be legally demanded."

RESOLUTION. — The Sacred Congregation of Bishops and Regular Canons, after mature deliberation on March 4, 1864, decided to respond affirmatively in all respects, and that the tithes and the *Quartese* are to be paid by the monastery to the Bishop in *summa*.

WE COLLIGATE: I. It is permissible for the owner of a piece of land to convert a piece of land, whether by himself or through another, which is burdened by tithes, to another use.

[*Latin ed. p. 625*]

DECIMATES. 625: To render [a property] uncultivated; nevertheless, the obligation to restore the tithes does not cease. It is not just that the tithe of the lord of the property should entirely depend on the owner of the property; and it is much less just that one should become richer from another's misfortune. III. Therefore, in these circumstances, an opportunity for reconciliation between the parties is opened, so that the rights of both, namely, the tithe of the collector and the lord of the property, may remain intact (1). IV. In the present case, the Holy Congregation has ordered the Bishop to determine the amount of money corresponding to the tithes that the Monastery must pay. (1) Another question had arisen between a parish priest of a certain town and the owners of properties burdened with tithes, for other reasons, and especially because the owners of the properties had abandoned artificial cultivation, leaving the properties uncultivated; there-

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fore, they were denying the tithes to the parish priest. The case was therefore before the Holy Congregation of Bishops, on July 11, 1863, under the question: "Whether, and how, for what sum, and from what time, there is a place for the payment of tithes, and what mandates should be relaxed, etc." The Holy Congregation responded: affirmatively regarding the payment in general; in the remaining matters, it deferred, with the instruction that the Cardinal should seek reconciliation, and if that fails, he should appoint an expert agronomist at the expense (of the N.N. lords) who will report according to instructions given... without delaying, meanwhile, the payment of 200 scudi as a provisional payment. When, however, the parties finally met, an agreement was proposed to the Holy Congregation on March 31, 1865, for due approval, under the question: "Whether, and how, an agreement should be made in this case." The Holy Congregation, after reviewing the agreement, responded: affirmatively in all respects, to the Most Reverend Pontiff, with all the necessary and appropriate powers to ensure that an instrument is drawn up before him, with due precautions. Such questions, which depend greatly on the circumstances of the case, are often entangled in the matter of fact, although, in general, there is no doubt about the law, whether concerning the tithe collector or the lords. Therefore, they are more appropriately defined by reconciliation between the parties involved. (Reference: *Collectio*, vol. I, section X, 40).

[*Latin ed. p. 626*]

Angers, the 29th of February, 1864. From the part of the Priest of the parish of Belloprat, the following doubts were presented to the Sacred Congregation for Indulgences:

I. "Whether the privilege of the Altar, that is to say, properly speaking, or personally, can be applied to the souls of several deceased, on any day of the Mass (observing the prescribed conditions), as was expressly, but specifically, declared by the Sacred Congregation on the 19th of May, 1761, for the Mass on the day of commemoration of all the faithful departed, on the 2nd of November."

II. "Whether, after the Apostolic Indult granted by the Most Reverend Ordinary on the 10th of May, 1860, which permits that, in all parochial churches of the diocese of Angers, the Mass of Requiem may be sung three times in each week, when the liturgical offices occur, except for certain days; the application of the privilege can be made in these three Masses sung in that manner, or must the said application be deferred to three other days on which the Mass will be said according to the ordinary rubric and according to other prescriptions of the Sacred Congregation?"

III. "Whether he who has the privilege of saying Mass three times a week can validly (when several feasts of the second class, and several semi-double feasts, or lesser feasts, are found) choose to apply the privilege to the feasts of the second class, rather than defer it to the semi-double feasts."

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RESOLUTION. The Sacred Congregation, having heard the opinion of the Consultor, on the 29th of February, 1864, decided to respond as follows:

To I: Negatively.

To II: Affirmatively; provided that semi-double feasts do not recur in the same week.

To III: As in the second.

[*Latin ed. p. 627*]

ANDEGAVEN*. 627. Totum consultoris in compendium redactum. Animadvertebat consultor, primum dubium resolutum iam posse censeri per decretum S. C. I. diei 28 Iulii 1840. Quaerebat enim episcopus S. Flori in Gallia: « utrum per indulgentiam altari privilegiato adnexam intelligenda sit indulgentia plenaria animam statim liberans ab omnibus Purgatorii poenis, an vero tantum indulgentia quaedam secundum Divinae Misericordiae beneplacitum applicanda. » Sacra Congregatio, votis consultorum auditis, respondit: per indulgentiam altari privilegiato adnexam, si spectetur mens concedentis et usus clavium potestatis, intelligendam esse indulgentiam plenariam quae animam statim liberet ab omnibus Purgatorii poenis, si vero spectetur applicationis effectus, intelligendam esse indulgentiam cuius mensura Divinae Misericordiae beneplacito, et acceptationi respondet. Neque opponi censebat consultor decretum eiusdem S. Congregationis diei 19 Maii 1761, vi cuius in die commemorationis omnium fidelium defunctorum conceditur privilegium altaris cunctis sacerdotibus eodem die celebrantibus favore defunctorum. Haec enim est benigna exceptio. Nonnullis insuper animadversis circa secundum dubium; ad tertium observabat S. Rituum Congregationem Decretis editis ut 1667, 1669, 1688 hanc tradidisse doctrinam: « Missis de festo, vel de feria lectis, diebus quibus Missae de Requiem prohibentur, posse applicari Altaris privilegium.» Et hisce responsionibus adhaesisse S. C. Indulgentiis praeposita Decreto diei 27 Nov. 1764. Eadem vero Congregatio indulgentiis praeposita statuit diebus non impeditis debere Missam celebrari in paramentis nigris ut quis lucretur indulgentias; idque patet ex Decreto diei 11 Aprilis 1840, in quo, proposito dubio: « utrum qui privilegium habet personale pro quatuor Missis in hebdomadis singulis, debeat cum paramentis colore nigro celebrare diebus non impeditis ut possit indulgentiam plenariam pro animabus defunctorum lucrari. » S. Congregatio respondit: affirmative. Item in Decreto 22 Februarii 1847 (1). Ex hisce vero eruebat consultor quid in hac quaestione respondendum opinaretur. (1) Vid speciales impedimenti casus in pagina 42 et seqq.

[*Latin ed. p. 628*]

ANGERS. On the 29th of February, 1864. The Director of the Archconfraternity of Saint Joseph, established in the city of Angers for the entire Gallic Empire, having been granted, by Apostolic Letters in the *forma*

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of a Brief issued on the 6th of September, 1861, the authority to erect the Archconfraternity, presented the following questions to the Holy See for resolution.

I. "Since in the aforementioned Brief, the faculty of aggregating other Confraternities is restricted solely to the Gallic Empire, it is asked whether the enrollment of individuals residing outside of said Empire is valid, who, although they may not be able to participate in the customary gatherings and pious exercises of the Confraternity, can nevertheless benefit from the indulgences granted for the fulfillment of certain prescribed works."

II. "Is it permissible to erect multiple Confraternities in the cities of Gallia with a larger population, when one is deemed sufficient to satisfy the devotion of the faithful due to the distance between locations and the variety of occupations?"

III. "Shortly after the granting of the aforementioned Brief, when another Archconfraternity was established in Bellovac, also for the entire Gallic Empire; it is asked whether the Archconfraternity of Angers can aggregate Confraternities in those cities in which another already exists, established by the Archconfraternity of Bellovac."

IV. "Since there are several Communities of pious women in Gallia, who have schools and associations of girls, and also boarding schools, it is considered very useful to erect Confraternities within their religious houses; it is asked whether such erections are permissible."

RESOLUTION. – The Sacred Congregation, having considered the questions presented on the 29th of February, 1864, responded as follows:

To I: Negatively.

To II: Generally negatively; however, in the presence of a serious reason, recourse should be made in particular cases (1).

To III: Negatively.

To IV: It is not advisable (2).

(1) In the Constitution of Clement VIII, dated the 7th of December, 1604, which begins: "Quaecumque," it is established that in one place, only one Confraternity of the same Institute and kind can be established and aggregated in both secular and regular churches.

(2) In the churches of nuns, Confrater-

[*Latin ed. p. 629*]

629 Tournay, die 29 Augusti 1864. Ad Sacram Congregationem Indulgentiarum propositum est dubium ab R.P. Ioanne Baptista Falise, parocho in dioecesi Tornacensi, videlicet: "Utrum ad effectum lucrandi Indulgentias ab Summis Pontificibus concessas Fidelibus, qui orationem vulgo dictam Angelus Domini, certis quibusdam diei horis ad Campanae pulsum pie recitaverint, requiratur ut Campana sit ritu ab Ecclesia praescripto benedicta." Duo auditi sunt Consultores, qui ambo opinati sunt requiri ad effec-

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tum praedictum Campanam benedictam, quam tamen opinionem secuta non est S. Congregatio. Praecipua autem momenta rationum quibus Consultores innitebantur sunt sequentia. Ecclesia praecipit, ut Campanae in sacrum usum destinatae benedicantur, adeo ut regulares possint etiam ab Episcopo cogi ad deponendum de Campanili Campanas, si ibi non benedictas appenderint. Ferraris, *Verb. Campana*, n. 6. In re autem de qua agimus, prout idem Auctor perpendit, *Verb. Indulgentia*, nn. 18, 19, 20, toties quoties sermo fit de Indulgentiis concessis pro recitatione orationis: Angelus Domini mane, meridie et vespere, semper adiungitur: ad pulsum Campanae. Facta est tantum exceptio a Romano Pontifice Pio VI., qui die 18 Martii 1781 benigne concessit, ut in iis locis in quibus deest Campanarum usus, omnes et singuli Christifideles corde saltem contriti, qui ter in die, scilicet, primo diluculo, circa meridiem, et sub vesperam, recitaverint piam precem quae incipit: Angelus Domini cum tribus salutationibus angelicis, vel: Regina coeli, tempore paschali, etc., omnes et singulas indulgentias lucrari valeant; quae recitantibus easdem preces ad signum Campanae a Pontificibus hactenus concessae sunt. Superflua porro videretur nititas laicorum erigi et institui nullimode possunt. Ferraris, *Bibi. Can. verb. Confraternitas*, in quo refert plures S.S. Congregationum Resolutiones. Verum licet in casu non egeretur de Monialibus proprie dictis, tamen eadem prohibitio, eodem ratione, videtur vigere.

[*Latin ed. p. 630*]

630. TORINO. Such an exception, if it served only as a substitute for a meritorious act, was proposed by Campana. Nor did it seem to obstruct the custom prevalent in religious orders, where prayers are often recited before a bell, which has not been solemnly blessed as a religious symbol; for here, the question is not what *is* done, but what *ought* to be done.

RESOLUTION. The Sacred Congregation for Indulgences and Sacred Relics, on August 29, 1804, deemed it appropriate to respond negatively to the proposed question.

FROM THE COLLECTIONS:

I. The indulgences in question were attached only to the specified prayers, and not to any other sacred act.

II. The condition added, namely, "at the sound of the bell, which is a customary ecclesiastical sign," is to be considered as determining the time at which the faithful should greet the Blessed Virgin Mary.

EXTRACT FROM THE DECREE OF THE RITUALS OF THE CITY.

"After the Most Holy Apostles, who brought the Trophy of the Cross of Christ to the Roman legions, and after so many among the heavenly hosts

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who, while acting on earth, edified this city with examples of virtue, and enriched it with a wealth of benefits, the Holy Catherine of Siena deserves to be remembered. Indeed, all of them shone with the praise of holiness among the citizens of Rome, but some of them, through apostolic labors, or the overthrow of idolatry, or the miraculous cure of plague, merited the city in an excellent way; and for this reason, they are venerated as heavenly patrons. Nor would it be an inappropriate honor to render to that most illustrious heroine, since she, in the Cathedral of Saint Peter, [and for the salvation of the good, and the ruin of the wicked,]..."

[*Latin ed. p. 631*]

THE CITY. 631. That this city, divinely established, might bring terror to its enemies, and that the Roman Pontiffs, for many years torn away from it, might be restored to it through their councils, prayers, and works. Indeed, it was almost the case that, because of the long absence of the Roman Pontiffs from this city, it would be utterly destroyed, reduced to ruins, afflicted by poverty, and shaken by the bloodshed of citizens warring against each other; but it happened that, with the return of Pope Gregory XI, it immediately changed its appearance, and acquired an abundance of all good things, by means of which it became a solace and aid to all peoples and nations. Now, in these our sorrowful times, the most pernicious enemies, who are instigating war against Christ and His Church, strive to strip the Roman Pontiff of his civil authority and dominion in Rome, by granting him honor and protection in the Basilica of Saint Peter, and even to drive him out and expel him from this city. Therefore, the illustrious Senate of this venerable city, adhering to the footsteps of ancestral piety, decided to commend itself and its own affairs to the most powerful patronage of Saint Catherine; for it is certain that, if God is invoked through the heavenly prayers of this Patron, He will defend the city from imminent danger. "Therefore, a supplication was presented to the Most Holy Lord, our Pope Pius IX, in which it was earnestly requested that His Holiness would deign to declare the Blessed Catherine of Siena as a secondary Patron of this city. His Holiness, who receives help in tribulation only through the divine intervention of the Lord, gladly accepted the prayers of the Senate and the Roman people, and, upon receiving the report of the Secretary of the Sacred Congregation of Rites, declared Saint Catherine of Siena, Virgin, as a secondary Patron of this venerable city; and ordered that, on her feast day, Mass and the Office be recited by both the clergy and the religious of the city and its district, according to the rite of a double feast. Finally, the same Holiness ordered that Apostolic Letters be issued on all these matters, in the form of a Brief. Despite any opposition whatsoever." March 8, 1866. C. Episc. Portuen. and S. Rufinae, Cardinal PATRIZI, S. R. C., Prefect. D.

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BARTOLUSI, R. C., Secretary. In the place of the seal, bound.

[*Latin ed. p. 632*]

FROM THE HOLY CONGREGATION! INDEX. DECREE. Tuesday, April 9, 1866. The Most Eminent Sacred Congregation of Cardinals, and by the Most Holy Lord, Our Most Holy Pope Pius IX, of the Roman See, concerning the Index of Books of Pernicious Doctrine, their condemnation, proscription, expurgation, and permission throughout the Christian Republic, having convened in the Apostolic Palace at the Vatican, condemns and condemns, proscribes and proscribes, or orders that the following works be referred to the Index of Prohibited Books:

* *Mélanges philosophiques et religieux*, by Bordas-Demoulin. Paris, 1846.

* *Essais sur la Réforme catholique*, by Bordas-Demoulin and F. Huet. Paris, 1856.

* *Oeuvres posthumes de Bordas-Demoulin publiées avec une introduction et de notes*, by F. Ruet. Paris, 1861.

* *Histoire de la vie et des ouvrages de Bordas-Demoulin*, by F. Huet. Paris, 1861.

* *La science de l'Esprit, principes généraux de philosophie pure et appliquée*, by F. Huet. Paris, 1864.

* *Le problème de la vie: recherche des Bases d'une Philosophie pratique*, by Jacques Legrand. Paris, 1864.

* *L'Ame au point de vue de la science et de la raison*, by I. P. Chevalier de Saint-Pol in Artois. Paris, 1863.

* *Storia documentata di Carlo Quinto in correlazione all'Italia*, by Professor Giuseppe De Leva. Volume 1. Venice, 1864.

* *Lettere ad un Amico intorno ai beni ecclesiastici*, by A. B. P. Lugano, 1865.

* *Notizie storiche sull'origine del dominio temporale dei Papi*, by P. A. M., Professor of Philosophy and Mathematics. Naples, 1865.

* *Troppo tardi, ossia la questione romana sotto nuovo aspetto studiata in Europa*, by Aurelio Turcolti, in contrast to that studied in Rome by Pier Carlo Boggio. Turin, 1866.

[*Latin ed. p. 633*]

DECREE. 63S. Problems of Christian Theology by Mariano Maresca, a member of the national parliament. Part I: God. Turin, 1863. A small volume in 8°. Decree of the Holy Office, on the fourth day of the month of January, 1866. Therefore, let it be forbidden to anyone, of whatever rank, in any place, to publish, read, or retain the aforementioned writings, and let the Inquisitors, duly appointed, prohibit these things. Those who, in the aforementioned condition, dare to publish, in any language, or to retain

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the aforementioned works, shall be held to betray the places [where they reside] to the Ordinary [bishop] of those places, under the penalties set forth in the Index of Our Holy Father [Pius IX], chapter ix, concerning matters related to secrets. In witness whereof, etc. Given in Rome on the 14th day of April, 1866. Approved by me, the undersigned, S.C. [Sacra Congregatio, Holy Congregation], and ordered to be promulgated: ANTONINUS Cardinal de LUCA, Prefect. Fr. [Father] ANGELUS VINCENTIUS MODENA, Ordinary of the Holy Office, Congregation for Secrets. 14th of April, 1866. The aforementioned Decree was affixed and published at Santa Maria sopra Minerva, at the Basilica of the Prince of the Apostles, at the doors of the Holy Office, at the doors of the Innocentian Curia, and in other customary places in the city. Aloysius Serafini, Apostolic Censor. Philippus Ossani, Major Censor.

[*Latin ed. p. 634*]

APPENDIX XXII. ON THE DIFFERENCE BETWEEN ECCLESIASTICAL AND LAY CHAPLAINCIES.

It frequently happens that chaplaincies, whether engaged in commerce or held by private individuals, and which could be ecclesiastical chaplaincies, are confused with lay chaplaincies; and the reason for this is that the term "chaplaincy" is used in civil matters, not in the sense of something that has been decreed for the benefit of the Church, but rather in a way that is not entirely clear. However, as can be gathered from the documents, there is a significant difference between the two. It is not uncommon for lay chaplaincies to be granted to clerics, and it sometimes happens that lay chaplaincies, which are harmful to the Church, are wrongly considered to be ecclesiastical chaplaincies.

Indeed, if one were to accept the mere name "chaplaincy" as sufficient, then there would be no real difference between ecclesiastical and lay chaplaincies in the documents, and even if chaplaincies are subject to the patronage of laymen, it does not necessarily follow that they should be considered lay chaplaincies, just as it is not the case that benefits, which are considered to be lay benefits, are necessarily subject to the patronage of laymen, although the law does not explicitly prohibit this.

However, there is a substantial difference between ecclesiastical and lay chaplaincies, as established by the law. This difference is that ecclesiastical chaplaincies are established by a canonical decree, which must be obtained within a quarter or half-year, as prescribed by the canons regarding the granting of benefits. Lay chaplaincies, on the other hand, are established by papal bulls or other documents, and the process for obtaining them is different.

First, it is necessary for the cleric to demonstrate that the agreement is not illicit. This can be done by showing that the goods in question were previously held in civil law, and that the cleric has a legitimate claim to

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them. Second, it is necessary to obtain a papal bull or other document that establishes the chaplaincy. This document must specify the terms of the chaplaincy, including the amount of the endowment, the duties of the chaplain, and the rights of the patron.

Finally, it is necessary to obtain a canonical erection of the chaplaincy. This is done by obtaining a decree from the local bishop, which establishes the chaplaincy and assigns it to a particular parish or diocese. The decree must also specify the terms of the chaplaincy, including the amount of the endowment, the duties of the chaplain, and the rights of the patron.

In summary, there are three main differences between ecclesiastical and lay chaplaincies:

1. Ecclesiastical chaplaincies are established by a canonical decree, while lay chaplaincies are established by a papal bull or other document.

2. Ecclesiastical chaplaincies are subject to the patronage of the Church, while lay chaplaincies are subject to the patronage of laymen.

3. Ecclesiastical chaplaincies are established for the benefit of the Church, while lay chaplaincies are established for the benefit of the patron.

It is important to note that these differences are not always clear-cut. In some cases, it may be difficult to determine whether a particular chaplaincy is ecclesiastical or lay. However, in general, the differences outlined above should help to distinguish between the two types of chaplaincies.

[*Latin ed. p. 635*]

IX xxii. And it is considered wrongful, the crime of simony is committed; for indeed, if a testator, whether expressly or tacitly, has not added any law by which the person who occupies the chapel and enjoys its usufruct cannot alienate or administer the chapel's goods, then the person holding the established position of chaplain, whether by himself or through others, cannot conclude anything, but if he does so, he will incur ecclesiastical penalties. In the exposition of the cause concerning which more could be said, I have already mentioned that a woman can also be involved in this, and I have made mention of the causes for which a woman can incur the censure of the Council. It is opportune to note that against those who alienate the goods of a chaplain without any just cause, no laic can bring a lawsuit, and that no qualities are required for others to enter into contracts of alienation in the name of the chaplain, and that they can certainly acquire the right of ownership of the goods. A priest is permitted to be a chaplain, but no cleric is permitted to be a chaplain, except in certain cases, as a certain norm can be derived from ecclesiastical and civil laws. In Matera, on September 7, 1726, the ecclesiastical authorities decreed that if a testator is both ecclesiastical and lay, a lay chapel should be established, and that such a chapel should be designated by the altar, the patronage, the reservation of a Mass to be celebrated in the testator's goods, and a greater suffrage for

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the church, and that the chaplain, whether clerical or subdiaconal, should serve this chapel with the favor of the sons of the aforementioned Sylvester. The Holy Congregation decreed that it is not forbidden for a deacon, or for a testator to impose conditions in the constitution of the chapel, which are to be religiously observed, as it is certainly to be done according to the will of both parties, which is the difference between ecclesiastical and lay chapels, which consists in the fact that the conditions which are necessarily prescribed in the former are derived from the disposition of the law, while in the latter they are derived from the disposition of a man. Therefore, although the chapel is lay, nevertheless, if the testator has said that the chaplain or cleric, or priest, must be of a certain order, then those who are of that order are also permitted; or if the chapel is ecclesiastical, then it is to be understood as affirmative in the first case, and negative in the second case, and furthermore. The Holy Congregation considered that the chaplain is to respect the ecclesiastical person who is to be the chaplain, and that the chapel is to have other legal effects, which are known from the words, and that it is not contrary to the fact that it is called lay, as it is declared to be collative. It is not lay in all respects, but rather in some respects.

[*Latin ed. p. 636*]

636 APPENDIX XXII. Concerning the establishment of a chaplaincy, and regarding whether, in such cases, named individuals are to be appointed ecclesiastically. "Thus, the aforementioned chaplain, or chaplains, Caesar de Grass, shall be removable at the will and at the discretion of the aforementioned canons, and shall be subject to their authority, as the canons themselves stipulate. In Farfa, on August 12, 1741, a chaplaincy was founded for the altar of the Blessed Virgin Mary, greeted by the Angel, and the chaplains have accepted possession thereof. The founder never appointed a nephew as the first chaplain, but rather left the matter in doubt: "whether the chaplaincy is to be considered merely a lay foundation, so that it may be held in a state of marriage." The Sacred Congregation responded: "regarding certain matters, affirmative and negative, concerning the first and second [canons], and further matters... It was judged that it is a lay foundation, so that it may be held in a state of marriage, according to the testator's intention. The Prefect for the time being, in the aforementioned diocese, shall execute [the will], and shall cause it to be executed, without any impediment, and with full authority." In the Ancona chaplaincy, on May 12, 1779, a priest, N., was ordered to establish chaplaincies with a distinct endowment from his own property: to the chaplains, however, he bequeathed the chaplaincy, so that they might receive it, and bear the burden of celebrating Masses and performing other duties, as assigned to the first, second, and other chaplains. It was then debated whether the chaplaincies are to be considered lay foundations, so that they may be possessed even by laymen. The Sacred Congregation responded: "It was

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judged that the chaplaincies are indeed lay foundations, to be conferred upon ecclesiastical persons, according to the testator's intention. In the chaplaincy of Città di Castello, the founder bequeathed two chaplaincies, to be held in his own property, with the obligation of celebrating Masses twice a week. On April 24, 1751, it was decided regarding the aforementioned chaplaincies: "whether they are to be considered lay foundations, so that they may be possessed even by laymen." The Sacred Congregation, having considered the matter, responded: "It is affirmed and negative, regarding the nomination of the canons and their successors, to whom pertains the free nomination of each and every chaplain." Furthermore, in Montalto, on August 22, 1795, a chaplaincy, or legacy, or lay patronage, was established for the conferral of the chaplaincy, to be held, and to celebrate two Masses each week, without any impediment, as a benefit for his nephew, with the obligation of celebrating.

[*Latin ed. p. 637*]

APPENDIX XXII. June 1, 1712. The testator established a chapel in a certain church, perpetually and in the future, with the obligation of celebrating, or having celebrated, Mass daily. Afterwards, he bequeathed the said chapel to his nephew, with the stipulation that he appoint a chaplain to the said chapel, and that he himself, as the first chaplain, should nominate a priest to the same chapel, with the same obligation, until his death, after which the chapel would be left to the Regular clergy. The testator, considering that the chapel was to be a lay chapel, stipulated that it should be maintained by a layman. However, when the aforementioned Regulars considered that the said Vir N. was not enjoying the benefits of the chapel, which was considered ecclesiastical, the question was raised as to whether lay people could possess such a chapel. It was argued that if the chapel were truly lay, then it could be held by a married layman without objection, which would not contradict the testator's will. After deliberation, the Sacred Congregation decided that the chapel was indeed a lay chapel, responding affirmatively.

Rare are the resolutions of this kind; for testators establishing lay chapels often explicitly or implicitly intend to grant their families the right to actively or passively patronize the chapel, even if it is a lay chapel, but at least to confer it upon a cleric. However, there are not a few resolutions of the Sacred Congregation which have declared a chapel to be lay, even to a layman, and even to a child.

In Auximana, December 15, 1787, a testator established a lay chapel for the benefit of his family, to whom he left the right to actively and passively patronize it. The first chaplain was nominated by the testator and, through the grace of the Holy See, retained the chapel in a permanent position; the words of the testator seemed to require an ecclesiastical quality.

In Rome, on the 12th, the first chaplain, already elderly and in poor

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health,

[*Latin ed. p. 638*]

638 APPENDIX XXII. Being in want, he requested from the Sacred Congregation of Clerics (S. C. C.) the granting of a chaplaincy, and the following doubts were proposed to the S. C. C. for their consideration: "Whether, in the case of a marriage, it is permissible to name a chaplain, and whether it is permissible to name a son as chaplain, and whether, in either case, the person named is capable of obtaining the chaplaincy." And the doubt: "Whether it is permissible for Jerome, the son of Joachimo (aged sixty years), to be appointed as chaplain, and whether there is room for dispensation in this case." The S. C. C. responded as follows: "I. Affirmative, as stated in the preceding. II. The Sacred Congregation judged that there is no successor in this case." The Sacred Congregation responded: "Dismissed." It was observed that the Orator had founded the chaplaincy for the benefit of his family, and that he usually dictated the names of those to be appointed as chaplains, especially in the case of lay chaplains, and that he did not require dispensation, even though he had reached the age of seven years, at which age he could receive the clerical tonsure. He intended that his inheritance should be transferred to his relatives as a benefice. Although lay chaplains are often appointed according to the will of the testator, the Sacred Congregation, according to the testator's intention, follows the person named, provided that the said relative is poor and can bear the burdens that are attached to the chaplaincy, even though the testator's words are retained. In the case of the City of Città di Castello, on July 17, 1776, the testator founded two chaplaincies, one for the benefit of the family, and the other for the church. He left the right to name the chaplain to the family, but to others he left only a passive right, and he wanted those chaplaincies to be perpetually linked to the benefice, which is of a clerical nature. On March 29, 1789, a cleric obtained the chaplaincy; the doubt was raised whether the chaplaincy of Massi is clerical, so that the chaplain is obliged to recite the Divine Office. The doubt was put to the S. C. C. to be resolved: "Whether the chaplaincies of the descendants of the aforementioned person are to be considered before others, so that the chaplain is obliged to recite the Divine Office, or whether the chaplaincy is to be considered clerical." It happened that there was no cleric among the descendants of the aforementioned person; there was only a boy aged sixty years, and it was doubted whether he was capable of obtaining the aforementioned chaplaincies. The Sacred Congregation responded negatively: "Ecclesiastical benefices are not lay chaplaincies."

[*Latin ed. p. 639*]

XX. It was often contended that certain considerations should be taken

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into account, and that these considerations, even if they did not explicitly appear in the wording, were nevertheless necessary to determine the nature of the institution. Thus, in the case of endowments for chaplains, it was often argued that, even if the testator did not explicitly state whether he intended to establish a "capellania laica" (lay endowment) or an "ecclesiastica" (ecclesiastical endowment), the circumstances surrounding the endowment could provide evidence of his intent. This was particularly relevant when dealing with endowments for chaplains, as the distinction between a lay and an ecclesiastical endowment had significant legal and financial implications.

An example of such a case is a dispute that arose before the Sacred Congregation of the Council in April 1863 concerning the nature of an endowment. The testator, in his will dated 19 January 1871, had bequeathed certain property to be used for the support of a chaplain. The question was whether this endowment should be considered a lay endowment or an ecclesiastical endowment.

Those who argued that the endowment was lay pointed to the fact that the testator had not explicitly stated that he intended to establish an ecclesiastical endowment. They argued that the testator's intention should be determined by the overall context of the will and the nature of the endowment itself. For example, they might point to the fact that the testator had also made bequests to other religious institutions, or that the endowment was intended to support a chaplain who celebrated Mass for the souls of the living and the dead.

On the other hand, the ecclesiastical court argued that the endowment should be considered ecclesiastical, and that it could only be properly administered by a cleric. They argued that the fact that the testator had specified that the chaplain should be appointed by a certain individual (N.N.) and his associates was not sufficient to establish that the endowment was lay. They argued that the testator's intention was to establish an endowment for the support of a chaplain, and that it was the duty of the ecclesiastical court to ensure that the endowment was properly administered.

The argument of the procurator fiscalis, however, was that the testator's intention was not as clear as the ecclesiastical court claimed. He argued that, according to the opinion of canonists, a "capellania" should be presumed to be ecclesiastical unless there is clear evidence to the contrary. He also pointed out that the testator had not mentioned the authority of the bishop in the will, which he argued was a significant omission if the testator had intended to establish a lay endowment.

Furthermore, the procurator fiscalis argued that the fact that the ecclesiastical court had issued a decree authorizing the appointment of the chaplain by a certain individual (N.N.) and his associates was not conclusive evidence that the endowment was lay. He argued that such decrees are

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often issued by the ecclesiastical court in order to facilitate the administration of endowments, and that they do not necessarily reflect the testator's intention. He also pointed out that the archives of the ecclesiastical court contained records of similar decrees, which were issued in connection with both lay and ecclesiastical endowments.

[*Latin ed. p. 640*]

640 APPENDIX xxii. It is alleged that a lay endowment was established, when the testator was excluded from the ecclesiastical court; then because the words of the testator are contradicted; and because in the ancient acts of the Venerable Fathers, in such cases, the Bishop intervenes with his authority only to declare the endowment, and to execute the pious will of the testator, and mention is made in those same acts of the right of nomination. If, however, the exclusion of the ecclesiastical court is not established, the endowment is presumed to be simple and movable, and therefore subject to the ecclesiastical authority, and consequently, a place is made for canonical erection and collation, or institution, as happens in ecclesiastical benefices, whether of free collation or of patronage.

Just as such formalities must intervene when it is a question of an ecclesiastical endowment; so also, from these formalities, it can be deduced that the endowment is ecclesiastical; that is, that it can be held by laymen and married couples, since nothing prevents the endowment, which perhaps in its institution was considered lay, from becoming ecclesiastical through such canonical acts.

The Holy Congregation, having considered the doubt presented by the Council: "Whether it pertains to a mere lay endowment, so that it may be retained by laymen and married couples," decided that it does not pertain to the lay nature of the aforementioned endowment, and gave the following response: that lay endowments can be held by laymen.

From what has been said, it is clear that lay endowments, which are often equated with legacies, are not subject to those laws which are established by law only for ecclesiastical benefices; but they are subject to those laws which are common to legacies, and which are imposed by the will of the testator.

It is considered that a pious endowment, and others from the will of...

[*Latin ed. p. 641*]

641 E X S. CONGREGATIONE SS. MIHI. It RIXIE IV. DE BEATIFICATIONIS ET CANONIZATIONIS SERVAE DEI BARTHOLOMAEAE CAPITANIO, FUNDATRICIS PRIMARIAE INSTITUTI SORORUM A CHARITATE IN OPPIDO LUERE. We believe it will be pleasing to our readers if we extract from the treasures of wisdom, the acts pertaining to the Canonization of Servants of God, certain matters, as is fitting for this chronicle, which recall the wise practice observed by the Apostolic See in han-

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dling such important causes; and which, as an example, may be followed at the appropriate time. Furthermore, as we learn from the judgment of the Holy See, which is conveyed through the Signature Commission regarding the introduction of the cause, the present cause of the Servant of God, Bartholomew Capitanio, offers us a suitable opportunity. What must be done before such causes are presented to the Holy See, what is the manner in which they must be instituted and carried out in the episcopal curias in the preliminary proceedings, which are called ordinary; what are the norms to be observed, and other matters of this kind; it is not necessary for us to detail here, as these would require a lengthy discussion, although we would like to allude to them briefly: on this matter, the benevolent reader, if he seeks further information, may consult the extensive volumes written by Benedict XIV. Our task, however, is to examine certain matters presented in these causes, and to draw attention to matters of practice that should be observed. Therefore, we will explain, or indicate in the present cause, what the Procurator for the Servant of God wrote in Rome after the ordinary process in the episcopal curia was completed; and what was subsequently discussed in the Acta, tom I, fase XI, 41.

[*Latin ed. p. 642*]

642 BRESIA. Then, between the Procurator for the same cause and the Promoter of the Faith, concerning certain matters pertaining to the ordinary proceedings, before entering the threshold of this prior judgment (1). A summary of the life of the Servant of God, Blessed Lucrezia, who was born in the town of Oppido, in the province of Bergamo, in the diocese of Brescia, on the Kalends of January in the year 1807. Her parents were Bartholomaea, Modesto Capitanía, and Catherine Canossi. She spent the first years of her childhood at home, where she immediately displayed a remarkable intelligence and memory. Although of a lively nature and, above all, fervent, she was nonetheless very attached to her parents, and readily obeyed their will. It was certainly possible to foresee great things for her if she were given a good education: she received the best education in the monastery of the Poor Clares, where she entered at the age of twelve. After a brief period of instruction in all that is customary for young girls, she became intensely devoted to the pursuit of Christian perfection. For when each of the students competed with a certain noble emulation of virtue, striving to extract the longest splints from bundles of reeds, as if God were assigning them a task, it was found that Bartholomaea, with the splints she had extracted, had surpassed the others (2). Indeed, the Servant of God, Bartholomaea, having received the splints, gave thanks to God and praised Him. From then on, a new love arose in her for the knowledge of the Saints; a greater diligence in curbing the desires and disturbances of the mind; and a change was seen in her speech, in her posture, in her gait, in her expression, in her eyes, and in the movement of her entire body.

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Therefore, the Servant of God, Bartholomaea, was compelled to surpass all others in this race of Christian virtues, and afterwards, they did not consider her a rival, but rather an example of perfection to be imitated. (f) The Advocate who undertook the defense of the cause of the Servant of God was Lawrence Lauri, against whom objections were made by the Reverend Father Peter Minetti, S.C. Advocate of the Holy Faith. (2) Almost as if playing, God acted in the world. Indeed, when Bartholomaea was still twelve years old and was being instructed among the girls of the monastery of Santa Clara in the town of Oppido, and she showed a certain sign of a more difficult nature, one day, the mistress of the students, as if in jest, told them that whoever had obtained the longest splint from the bundles of reeds would have to strive more diligently for holiness. Bartholomaea obtained the splint, and it appeared that God had chosen her for this purpose, so that she might, as it were, shine as an example of Christian perfection to others in the future.

[*Latin ed. p. 643*]

BRIXIEN. 643 She constantly aspired to higher things. Saint Aloysius, whom she had already chosen as her patron, she resolved to emulate in his virtues, especially in integrity and purity of spirit. Therefore, she was always diligent in modesty and Christian abstinence, and even inflicted harsh punishments upon her own body, with chains and whips. However, she could not deceive others with a false display of virtue; for the nuns often had the opportunity to test her constancy, and often, they themselves diligently sought to discover the cause of her efforts. The Mistress of the girls, Bartholomew, did not hesitate to reprimand her sharply, and not only rebuked her for the faults of others, but also imposed punishments; yet, she bore these rebukes and punishments with a serene countenance, willingly submitting to them, eager to defend herself. She neglected nothing that pertained to controlling her appetites. She constantly restrained the desires of her mind, so that not even in a sudden impulse would her mind be distracted. She even placed stones in her mouth, lest anything be imprudently uttered by her due to a sudden disturbance; and, as a Greek orator would do, she diligently practiced speaking, so that the Servant of God might act rightly and wisely; thus, she was far superior to others in this regard, because she valued obedience more than eloquence. Therefore, because of her piety and her skill in all feminine exercises, which surpassed those of the others, the Servant of God was appointed to the instruction of the other girls; and in this office, she so proved herself, and so won the affection of her students, that they would not allow her to be separated from them for any length of time. It is difficult to express in words the sorrow and tears with which all followed her when she returned to her father's house, where Bartholomew remained unchanged – her outward manner of living was not altered, but her spirit was; and I do not know whether this was more

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necessary for her than when she was at home with her family. For she had a father who was lost to her, and a sister who was exceedingly harsh and difficult to deal with; yet, she was never found to be in conflict with either of them, nor did she ever detract from the reverence due to her father, which is fitting for a daughter, even once. Rather, she won both of them over with kindness and patience; and, above all, she improved her father's manners through her labor and charity, and she ensured that his last breath of life would be secure in the knowledge of her future well-being. Furthermore, in addition to obeying her superiors, she also undertook the instruction of girls at home; and how useful this was, is proven by the desire that each person has to see her daughter instructed by the Servant of God.

[*Latin ed. p. 644*]

644 BRIXIEN. [These matters] should be decided; and the progress of the young women, that desire far exceeding. But this alone seemed a shameful undertaking to him, and he could no longer restrain the stronger ardor for the salvation of others. Therefore, following the wisdom and authority of her to whom he had revealed all the secrets of his heart, he devoted himself to establishing a congregation, and under the auspices of St. Aloysius, the Blessed Virgin Mary, and Jesus Christ, whose help he was certain would not fail, he founded an Institute of Sisters, called "The Servants of God"; thus, already bearing that name, she began to be a guide and leader to others in the propagation of the good of the Christian republic. So great was the honor that was bestowed upon her Institute in so short a time, that, through the ministry of its leaders, as well as the number and learning of its students, it easily surpassed all others. This wonderful work, created and established by the open favor of God, showed the great effort that the Servant of God made for the salvation of others. Not only did she form young women in good arts and piety in the schools, but she also comforted the sick in hospitals, speaking to them and offering assistance in the name of her institute, and encouraging them to perform religious duties. The people of the town of Luera felt it, and even more distant regions felt it, that benefits would come to the citizens from the Institute of the Servants of God. From this, many, at her request, were inspired to establish other similar institutions; and thus, the fame of St. Bartholomew was increased even more. But eight months after the founding of the Institute, her life was interrupted by death. She was saddened that she had not deserved more of divine goodness, but she was glad that, having laid down the body, she would be united with God for eternity; with whom she promised to constantly intercede for the promotion of the Institute. And so, after a slow illness that gradually weakened her strength, having duly received the sacraments of the Church, she died on the 18th of August, in the year 1831, having completed her twenty-sixth year. The people did not cease to admire the Servant of God after her death, and her honor

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increased even more through the miracles that God added to it. Indeed, it was demonstrated that she had fulfilled what she had promised in heaven, as the fortune and glory of the Institute grew more and more each day. After this account of the life of the Servant of God, as is customary, the Procurator of Grado proceeded to show, through distinct articles, the theological virtues, namely, heroic faith, heroic hope, and heroic charity.

[*Latin ed. p. 645*]

BRIXIEN*- 645, concerning the charity towards God, a heroic charity towards one's neighbor. Then, the cardinal virtues, namely, the heroic prudence of the Handmaid of God, heroic justice, heroic fortitude, heroic temperance; then, heroic obedience, heroic chastity, heroic humility. Thus, demonstrating these points, the discourse concerned the supernatural gifts with which the Handmaid of God was endowed during her life, and furthermore, concerning the reputation of holiness in her life; concerning her final infirmity and her precious death; concerning the reputation of holiness after her death; and concerning the miracles that occurred after her death. However, before the cause is presented to the Holy Congregation in such a manner, it is sent, along with its complete proceedings, to the Promoter of the Faith, who, for the sake of his office, having reviewed the proceedings, writes down those things that appear to be contrary, with the signature of the commission for the introduction of the cause, whether they concern extrinsic matters, that is, the manner in which the proceedings were instituted, and other formalities to be observed; or whether they concern intrinsic matters, namely, the virtues of the Handmaid of God, the reputation of holiness, etc. Those things that the Promoter of the Faith writes down in the exercise of his office are called *Animadversiones* (Observations), and, concerning our matter, we select the following:

Disputatio synoptica.

ANIMADVERSIONES PROMOTORIS FIDEI. – The Promoter of the Faith initially observed that, in the present cause, those things that Benedict XIV. in his work *De Servis Dei beatificatione*, book 2, chapter 36, states must be observed, do not appear to be present, namely: that a petition, or request for the granting of the commission for investigation, is not presented to the Holy Congregation of Rites unless written works by the Servant of God are recorded, if it is established that she wrote them; for the Promoter indicated that it was at least doubtful whether these had been observed. It was established from the testimony of witnesses that many things were written by Bartholomew, or dictated by her; not only letters, but also the method of her life, pious writings, novenas, prayers, and the like. However, the Promoter indicated that not all of these had been presented to the Holy Congregation, based on the testimony of one witness, who seemed to state that not all of the writings of the Handmaid of God had been presented

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by the students of the Institute, and that many of her writings only came to light after recent decrees by the Bishop. Therefore, the Promoter considered it necessary to order a new investigation, so that those things that are still hidden, may be brought to light.

[*Latin ed. p. 646*]

646 BRIXIEN. [They] will predict: that a document must be presented, from the writings already exhibited, whereby it would be clearly established that [the matter] has already been referred to the truth, and that nothing prevents proceeding to further steps; or an Apostolic rescript, whereby it is permitted to do so in the future. CONCERNING THE REASON FOR THE COMPLETED PROCESS. – Regarding the reason for the completed process, the Promoter of the Faith observed that, although in this seat of judgment, the minute details of the process are not [contained in] the *tabulae*, since it suffices if they do not present any manifest flaw of nullity; Benedict XIV, I.c., n. 12: nevertheless, certain serious objections appear to be opposed to the prescribed method of completing such a process. For these judgments are likened to criminal judgments; and, according to "the axioms of criminal law, all witnesses are interrogated," the Promoter stated. For the doctors of criminal law teach that interrogations should not be suggestive; thus, Ludovicus a Plegnara, *Decis. crim.* c. 5 n. 21 writes: "Interrogation should be done in general, but not in a specific or individual manner...." And the reason is, because if the interrogation were done in a specific manner, it would rather incite or suggest, than inquire." Also, Cyriacus, *Controvers. fovens.* 150 n. 97: "It must be noted (by the Judge) and he must take care entirely, lest, through suggestive interrogations, he present the fact in such a qualified manner, as if it were and is the case before the Court; but he should inquire in general, according to the text in the law, 1 §, which is in the chapter on Questions, whose words are: He who is about to ask a question should not ask in a specific manner, whether Lucius Titus committed a homicide, but in a general manner; who committed it. For the former seems to suggest more than to inquire." Otherwise (as Cyriacus himself adds, n. 102), "a confession of guilt obtained through suggestion, whether concerning oneself or concerning accomplices, is, by law, null and does not affect anyone." This is confirmed and expanded by Farinacius, *quaes.* 83 c. 4 n. 84 and 86: "A confession obtained through suggestion is not sufficient to condemn, and everything that follows from it is, by law, null." And n. 86: "Furthermore: the rule proposed in this fourth chapter also applies to the examination of witnesses, in which I have also said that suggestion is prohibited by law, as I have explained in the treatise on witnesses, etc." What should be done regarding suggestive interrogations, Farinacius also

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teaches, and gives examples, ibid. n. 84: "If the Judge..."

[*Latin ed. p. 647*]

BRIXIEN. 647 i> One ought not to interrogate the accused concerning the circumstances and special qualities of the committed crime; that is, whether, for example, he killed Titus in such a place, on such a day, wounding him in the chest with a sword, and so on for each detail; but one ought to interrogate him generally: whether, from that time onward, he had any quarrel with anyone, with whom, in what place, in what manner, and at what time; whether any wounds were inflicted, on what part of the body, and similar things.

Having explained this doctrine, the Advocate for the Faith cited as an example seven or eight questions, by which the qualified facts were presented to the witnesses. I will adduce one or two. Question LIV was presented as follows: "Did [the deceased] determine, according to the established form of the Institute, to enter the prepared house and begin pious work; or did she hesitate for a while, being uncertain because she lacked students?" The Censor affirmed that no mention of these things had been made in the previous questions. Furthermore, Question CLXXVII, conceived in these words, was presented to the witnesses: "Did you do anything, or raise any doubt, against him who claims that [the deceased] preserved her baptismal innocence, and who insists on I. [her] innocence? II. etc. etc."

From these and other similar examples, the Advocate for the Faith concluded that such questions should not be used, since they are suggestive and completely vitiate any investigation, so that they should be considered of no importance whatsoever. Furthermore, the Advocate for the Faith noted that the answers of the witnesses appeared exhausted and almost drained, according to these questions. For indeed, one or the other of them would reveal themselves with a small word, namely – as I heard from various people – by showing themselves affirmative – "it is true, etc."

Furthermore, Benedict XIV said: "Whatever Pignalelli wrote, consult. 190 t. 1, where he says that the testimony of a witness should not be rejected who, after reading the article upon which he is questioned, responds that the article is true; certainly, no consideration should be given to such a testimony."

From this, as an example, the same Pontiff mentions the Cause for the Canonization of B. Bernardinus de Feltro, in which the Holy Congregation on June 10, 1664, declared that no consideration should be given to those witnesses who are noted to have responded only with the word "yes," or who said that the article was "true."

[*Latin ed. p. 648*]

648 BRIXIEN. After making various other observations, the Promoter of the Faith finally noted that the witnesses did not seem to understand

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what they were being asked, for example, when asked by a witness: "How did Bartholomew exercise the justice of God?" he answered affirmatively. Similarly, when asked, "Did she show, and by what signs, a vehement zeal for the offended glory of God?" the witness answered affirmatively. The Promoter stated that such examples were frequent in the process, and that the witnesses did not provide any reason for their knowledge. Furthermore, as the Glossa states in chapter 16 of the *Sentences* and *Re iudicat, v. de causis*, "It is not sufficient for a witness to say that he knows something, unless he also states the reason for his knowledge, since there are many kinds of knowing." After these and other observations, which the Promoter had carefully and thoroughly noted regarding the process, he proceeded to address other matters concerning the reputation of sanctity after death, and some concerning virtues; but since these are entirely specific and less relevant to our matter, we will leave them aside for the sake of brevity.

RESPONSES OF THE PROCURATOR. The Procurator endeavored to refute the opposing observations with a lengthy discourse, from which we draw some points. Regarding the first observation, which concerned the examination of the writings of the Servant of God, he responded that the investigation had been completed according to the instructions given; that all the writings had been collected together during the process, which is called the "process of diligence," and transmitted to the City; and that a decree had been issued by the Sacred Congregation on August 11, 1860, with the following wording: "Nothing prevents proceeding to further steps, reserving to the Promoter of the Faith the right to object, as and to the extent that it is legally permissible." He also sought to demonstrate, from the testimony presented by the Promoter, that no argument could be made to show that other writings of the Servant of God remained to be examined.

Concerning the objections raised against the preparation of the process, the Defender first noted that, in the present court, the process was being conducted solely with ordinary authority, and not with Apostolic authority. And although it would be very desirable that these ordinary processes should be carried out with the same formalities as Apostolic processes, it often happens otherwise. The Sacred Congregation issued a circular letter on March 12, 1631, in which it established the conditions to be observed in these processes; however, this letter...

[*Latin ed. p. 649*]

BRIXIEN. 649. The decree is not binding: therefore, if anything contrary to the prescription of that Letter has been found to have been done in these proceedings, it is not for that reason that the Holy Congregation declared the proceedings null. Benedict XIV, I, 2, chapter 43, paragraph 18. With these general points noted, the Advocate proceeded to refute or weaken each individual objection. However, the Promoter of the Faith repeated the main flaw in the argument, namely, that such judgments were equated

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with criminal judgments, although the Defender did not deny this, but rather conceded it; nevertheless, he indicated that there were more differences between the two types of judgments. We believe it is useful to fully reproduce here the differences indicated by the Defender, because we know a thing more fully when we distinguish it more from other things. In criminal judgments (thus the Defender distinguished), the inquiry is initiated and completed by the judge and the clerk, without the Fiscal having a place in the examination of the matter or the witnesses during the completion of the process. In our judgments, the Fiscal is present from the beginning to the end of the inquiry. In criminal judgments, interrogations are conducted by the judge; in our judgments, they are presented by the Fiscal, with the precaution that the judges themselves should ignore the interrogations until the examination is complete. In criminal judgments, the judge questions according to necessity and opportunity, which can always vary in the progress of the inquiry; in our judgments, there is a single form of interrogation according to which each witness must be examined; moreover, the interrogations are devised based on articles previously presented by the Postulator, so that they do not only relate to discovering the general truth, but also to proving the existence or non-existence of facts that are presented in the articles as true. In criminal judgments, objections are made, and the statements of witnesses may be communicated to the accused or to other witnesses; in our judgments, the answers of witnesses always remain secret until the conclusion of the process. In criminal judgments, the matter concerns proving one or another crime, which the memory of witnesses cannot escape; in our judgments, the matter concerns proving the heroic nature of particular Christian virtues of a Servant of God, which must be proven through specific acts of each virtue, repeated in such a way that it is also established that the exercise of these virtues continued until death; it is, therefore, a matter of the entire life of the Servant of God, of almost every act of his life, which, unless witnesses are encouraged by appropriate interrogations, will not be known.

[*Latin ed. p. 650*]

(30) It is easy for them to flee the memory of these things. Hence, it is not uncommon for the answers of witnesses to questions to be weak; on the other hand, we read that their testimonies are most complete when they are questioned about specific points. Having noted these things, the Defender further argued that those questions which were rejected as being suggestive should at least be considered as paraphrases of the articles, or as the articles divided into parts. And even if this hypothesis were accepted, that the suggestive questions were rejected by the Censor, it does not, he said, necessarily follow that all the rest should be rendered null and void. Indeed, the questions taken together numbered sixty-nine; but those noted by the Censor are one hundred and fifty; therefore, it must be considered that a

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valid inquiry was made regarding the remaining three hundred and sixty-six questions. Although this answer did not entirely please the Defender himself, given the hypothesis which he was arguing against; nevertheless, he said, even if this hypothesis were accepted, since we are not dealing with an Apostolic process, which is subject to a nullifying clause, it does not necessarily follow that the inquiry should be rendered null and void. Furthermore, the Defender denied that the answers of the witnesses were weak and almost exhausted, if some were excepted; and he conceded that those weak answers should be rejected; that is, that no one could rely on those answers to prove the virtues of the Servant of God, as the Defender himself did not rely on them. But regarding those objections raised concerning the answers of the witnesses, from which the Censor argued that the witnesses had not understood the questions, the Defender replied: that the questions in question consisted of two parts, namely, whether the Servant of God showed zeal, etc., and by what signs; but since the witness answered affirmatively to one part, it cannot be argued that the witness did not understand the question, simply because he did not answer the other part. The Defender said the same should be said about another question presented by the Censor, if it were presented in its entirety, and which was as follows: How did Bartholomew exercise the justice of God? Did she appear to be constantly and zealously submissive to the will of God, and completely dependent on God? To this question, the witness answered affirmatively.

[*Latin ed. p. 651*]

BRIXIEN. 651. He finally maintained that it could not, by any right, be said that the witnesses had not given a reason for their knowledge, if it is observed what Benedict XIV teaches in the aforementioned passage, I, 2, chapter 49, number 10: "Since, in causes of beatification and canonization, witnesses most often testify about things that are not perceived by the bodily senses, or about miracles, which have a hidden cause, therefore, it is held that a witness, in these causes, who testifies about these aforementioned acts, must give a reason for his knowledge, even if he has not been questioned about it by the judges, and indeed, if he does not give a reason, his testimony will not be considered." From these words, the Defender argued that a witness is not required, at least under penalty of the nullity of his testimony, to give a reason for his knowledge when he testifies about acts that can be perceived by the bodily senses. But furthermore, with the addition of examples, by which he demonstrated the contrary, he implored the Most Reverend Fathers to examine the rest of the process in the records. Therefore, after these and other matters, which were extensively debated on both sides, it was proposed to the Sacred Congregation to resolve the doubt regarding the custom: "Whether the Commission for the introduction of the cause should be signed in the case at hand, and for the effect of what is being discussed."

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RESOLUTION. — In the Ordinary Session of the Most Holy Congregation, after mature deliberation on all matters, and after hearing the voice and written opinion of the Reverend Father, Doctor Peter Minetti, Promoter of the Holy Faith, it was decreed: affirmatively, that is to say, that the Commission should be signed, if it pleases the Most Holy [Congregation]. On March 3, 1866. Subsequently, after a report on the aforementioned matters by the Reverend Father, Secretary to the Most Holy [Congregation], His Holiness approved and confirmed the sentence of the Holy Congregation, and signed the Commission for the introduction of the cause of the VENERABLE (1) Servant of God, Bartholomew Capitanio, aforementioned. On the 8th of the same month and year.

(1) By this signing of the Commission for the introduction of the cause, the Servant of God is adorned with the title of Venerable.

[*Latin ed. p. 652*]

652 AMERICA. CONCERNING THE BEATIFICATION AND CANONIZATION OF FATHER FRANCIS, PRIEST, OF THE ORDER OF MINORITES OF THE OBSERVANCE OF SAINT FRANCIS. DECREE. – "Whereas, the Most Holy Lord, our Pope Pius IX, on the fifteenth day before the Kalends of September, in the year 1858, benignly decreed that the matter concerning the Introduction of the Cause of the Servant of God, Father Francis, of Mary, of Praemosello, Priest, of the Professed Order of Minorites of the Observance of Saint Francis, should be considered in an Ordinary Congregation of Sacred Rites, without the intervention and vote of Consultors, even though less than ten years had elapsed from the day of the presentation of the Ordinary Process in the Acts of the Congregation of Sacred Rites, and the writings of the aforementioned Servant of God had not yet been thoroughly investigated and examined; and whereas, We, and the Most Reverend Cardinal Joseph Bofondi, Relator of this Cause, at the request of the Most Reverend Father Bernardine, of the Crypts, Postulator General of the Causes of the aforementioned Order, having considered the supplications of several Reverend Prelates, including Cardinals, and other men of distinction in ecclesiastical and civil affairs, in Ordinary Congregations of Sacred Rites held at the Vatican today, proposed the following question for discussion: Whether a Commission for the Introduction should be appointed in this case, and for the purpose of which we are speaking?" And the Sacred Congregation itself, after mature deliberation and having heard the voice and written opinion of the Reverend Father Peter Minetti, Promoter of the Holy Office, decided to respond: "Affirmatively, that is to say, a Commission should be appointed, if it pleases the Most Holy [Pope]." On April 28, 1866. After the aforementioned matters had been reported to the Most Holy Lord, our Pope Pius IX, by the undersigned Secretary, His Holiness approved and confirmed the judgment of the Sacred Congregation, and signed the

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Commission for the Introduction of the Cause of the Venerable Servant of God, Father Francis, of Mary, of Praemosello, aforementioned, with his own hand. On May 3rd of the same year. At the Place of the Sign, C. The Bishop of Portuen and Saint Rufina. [Signature] PATRIZI, S.R.C. Prefect. [Signature] BARTOLOMNI, S.R.C., Secretary.

[*Latin ed. p. 653*]

653 K E A P Oli ITA W A BEATIFICATIONIS ET CANONIZATIONIS YEN. SERVAE DE! MARIAE CHRISTINAE A SABAUDIA REGNI UTRIUSQUE SICILIAE. DECRETUM. — "In the preceding year, 1865, on the eleventh day before October, the Most Holy Pope PIUS IX, with paternal kindness, approved that a process be initiated in the Ordinary Congregation of Sacred Rites, without the intervention or vote of Consultees, concerning the fame of sanctity, virtues, and miracles in general, of the Venerable Servant of God MARIA CHRISTINA of Savoy, Queen of both Sicilies. At the urging of the Most Reverend William De Cesare, Abbot General and Ordinary of the Benedictine Congregation and of the Diocese of Montis Virginis, Nullius; the undersigned Cardinal, Promoter of this Cause, proposed to the Ordinary Congregations of Sacred Rites held today in Vaticanum, the following question to be discussed: Whether it is established that the Apostolic Process constructed in Romae concerning the fame of sanctity, virtues, and miracles in general of the aforementioned Servant of God is valid and relevant in this case and to this effect? The Most Reverend Fathers entrusted with the safeguarding of the sacred rites, after mature deliberation, and having heard the voice and written testimony of the Reverend Father Dominicus Petrus Minetti, Promoter of the Holy Faith, judged it necessary to respond: "Affirmatively in all respects." On April 28, 1866." Having reported the foregoing through the undersigned Secretary to the Most Holy Pope Pius IX, His Holiness approved and confirmed the Decree of the Sacred Congregation. On May 3, 1866. C. Episc. Portuen. et S. Rufinae CARD. PATRIZI S. R. C. Praef. Loco gg- Signi D.'BARTOLINI S. R. C. Secretarius.

[*Latin ed. p. 654*]

654. CONFIRMATION OF THE CULT RENDERED FROM TIME IMMEMORIAL TO THE SERVANT OF GOD JOHN SORETH, BLESSED, GENERAL SUPERIOR OF THE CARMELITES OF THE OLD OBSERVANCE. DECREE. "Whereas Our Most Eminent and Reverend Lord Cardinal Prosper Caterini, at the urging of the Most Reverend Father Angelo Savini, General Vicar of the Order of Carmelites of the Old Observance, in the Sacred Rites Ordinaries' Assemblies held this day at the Vatican, proposed the following question for discussion: Whether the cult rendered by the aforementioned Servant of God, from time immemorial, constitutes a public ecclesiastical cult, or whether it is an exception to the

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decrees of Pope Urban VIII? The Most Eminent and Reverend Fathers entrusted with the safeguarding of the sacred rites, having carefully considered the presented documents, clearly understood that this cult is indeed public and ecclesiastical, long before the Centenary, as required by the decrees of Pope Urban VIII, and without any interruption, has persevered to this very time; and, without hesitation, they approved of its confirmation; and, after having heard first the voice and the written opinion of the Most Reverend Father Peter Minetti, Promoter of the Holy Office, they judged it necessary to respond: Affirmative, that is, that it constitutes a case of exception. April 28, 1866. "Regarding the foregoing, a report was subsequently made to His Holiness, Our Most Holy Father Pius IX, by the undersigned Secretary; and His Holiness approved the judgment of the Sacred Congregation, and confirmed the public and ecclesiastical cult rendered from time immemorial to the aforementioned Blessed John Soreth." May 3, in the same year. C. The Bishop of Portuen and S. Rufinae, Cardinal PATRIZI, S. R. C. Prefect. D. BARTOLOM, S. R. C. Secretary.

[*Latin ed. p. 655*]

655 CONCERNING THE CONFIRMATION OF THE CULT RENDERED FROM TIME IMMEMORIAL TO THE SERVANT OF GOD CONVOION, FOUNDER AND FIRST ABBOT OF THE MONASTERY OF ROTHONENSIS, DEDICATED TO THE SAINTS. DECREE.— "Since the Most Reverend Lord Godfrey, Archbishop of Rennes, having demonstrated from ancient monuments that the Servant of God Convoion, Founder and first Abbot of the Monastery of Rothonensis, has received public and ecclesiastical cult from time immemorial, namely long before the decrees of Pope Urban VIII, and that this cult has continued to this day, and having urged that the same cult be confirmed by this Holy Apostolic See; the Most Reverend and Most Illustrious Lord Cardinal Alexander Barnabò, in place and by right of the Absent Most Reverend and Most Illustrious Lord Cardinal Villecourt, Relator of this Cause, proposed the following question for discussion at the Ordinary Congregations of the Sacred Rites held this day at the Vatican: Whether it is established that a public and ecclesiastical cult has been rendered from time immemorial to the aforementioned Servant of God, or whether this is a case excepted from the decrees of Pope Urban VIII. The Most Reverend and Most Illustrious Fathers entrusted with the safeguarding of the Sacred Rites, after mature deliberation, and after hearing the Reverend Father Peter Minetti, Promoter of the Holy Office, who expressed his opinion orally and in writing, judged it fitting to respond: "Affirmative, that is, it is established that this is a case excepted." April 28, 1866. Concerning all of the above, a report was subsequently made by the undersigned Secretary to His Holiness Pope Pius IX, and His Holiness approved the decree of the Sacred Congregation, and confirmed the

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public and ecclesiastical cult rendered from time immorial to the Blessed Convoion, Founder and first Abbot of the Monastery of Rothonensis." May 3rd of the same year. Signed: C. Bishop of Portua and S. Rufinae, Cardinal Patrizi, S.R.C., Prefect, D. Battolins, R.C., Secretary.

[*Latin ed. p. 656*]

Regarding the Cult of Saint Peter Levita, which has been observed from time immemorial. DECREE. — Among the distinguished men whom the Most Holy Pope Gregory the Great chose as prudent advisors and companions, Saint Peter Levita was most illustrious, a fellow citizen with whom he later engaged in discussions and composed four books of Dialogues; and his name and virtues, in which he wonderfully shone, were commended to posterity. This Servant of God, it is believed, received public and ecclesiastical cult from the Holy See long before the centenary [period], and that this cult has never been interrupted until this time, as demonstrated by very clear proofs and monuments, so that the Most Reverend John Peter Losanna, Bishop of Biella, did not hesitate to bring forth a proposal regarding the confirmation of this cult before this Holy Apostolic See. Adhering to his wishes, the Most Eminent and Reverend Cardinal Charles Sacconi, Relator of this Cause, in the Ordinary Assemblies held today at the Vatican, proposed the following question for discussion: Does it pertain to a public and ecclesiastical cult rendered to the Servant of God from time immemorial, or does it pertain to an exception from the decrees of the Most Holy Pope Urban VIII? The Most Reverend Fathers entrusted with safeguarding the sacred rites, after a careful examination of all matters, and after hearing the voice and writings of the Reverend Father D. Peter Minetli, Promoter of the Holy Office, judged it necessary to respond: Affirmative, or It pertains to an exception. April 28, 1866. "Afterwards, a report was made regarding the foregoing to the Most Holy Lord Pope Pius IX, and His Holiness approved the Decree of the Sacred Congregation, and confirmed the public and ecclesiastical cult rendered from time immemorial to Blessed Peter Levita. May 3rd of the same year." C. Bishop of Portuen and Rufinae. Sign. Cardinal PATRIZI. S. R. C. Prefect. D. BARTOLINI. S. R. C. Secretary.

[*Latin ed. p. 657*]

C 57 FROM S, CONCERNING THE ESTABLISHMENT OF THE SEMINARY DEPUTATION. August 27, 1864. Session 23, page 18, regarding Reforms. Summary of the matter. The generous Bishop N., upon assuming the governance of the diocese entrusted to him, dedicated himself to establishing a new Seminary and to enriching it with the abundance of his resources. When, in the year 1703, he had completed this work, he supplicated the Supreme Pontiff, so that he might approve the instrument of establishment which he was about to draft, and so that he might confirm the Rules and Statutes which he had drawn up according to the example of

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St. Charles Borromeo, in a specific form (1). The Roman Pontiff entrusted the examination of this matter to a special Congregation, which, after hearing the laudable Bishop and others, among other things, decided: "For the proper governance and administration of the Seminary and its assets, it is to be stipulated in the instrument of establishment that deputations are to be made in all matters, according to the form of a Council, and that the Rector of the Seminary is to remain subordinate, not only to the Bishops for the time being, but also to the aforementioned Deputaties, according to the form of a Council. The Statutes, however, concerning the good governance of the Seminary, are to be confirmed in a common form." However, the Bishop (the reason for which is unknown) in the very instrument of establishment, six months after the laudable decree was completed, appeared to deviate from the procedure of the Council of Trent in the constitution of the Deputation. For, in order that the aforementioned Seminary might be properly governed, both in spiritual and economic matters, he established a congregation in which the Dean, the Sacristan, two Chaplains, the Rector of the Seminary for the time being, and five Lectors were to participate, at least once...

(1) It is stated in a specific form that there is a difference between confirmation in a form approved by the Roman Pontiff, when it is specific, and the common form. The Authors, as cited, refer to the confirmation of Benedict XIV. in his work, stating that he renders the laws as his own confirmation, so that the Episcopal laws become decrees. 13. 5. lib. cap. de Synodo Apostolicae. What, however, is the difference? Acta, vol. I, page Xl 42.

[*Latin ed. p. 658*]

658 CONCERNING THE COLLEGE OF GOVERNORS. They were to be assembled weekly in a place designated by the Rector, for the purpose of discussing and arranging matters, both spiritual and economic, etc. After the death of Bishop N., his successor does not seem to have observed the regulations concerning the College of Governors of the Seminary, as established by the diocesan synod, according to the form of the Council of Trent; however, over time, this arrangement of Bishop N., at least in part, was maintained by the Apostolic Visitor sent to that diocese, in which the Seminary flourished in the cultivation of the sciences; but the economic affairs did not seem to be proceeding so well. The present administrator of the diocese, being in doubt as to whether the Seminary should be governed according to the regulations of the Council of Trent, or rather, according to the regulations of Bishop N., proposed the matter to the Sacred Congregation of the Council. After hearing all those concerned, and after the documents relevant to the matter were presented, the case was submitted with the doubts stated below.

DISCUSSION.

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THE ARGUMENTS PRESENTED BY THE COLLEGE OF GOVERNORS IN FAVOR OF THE SEMINARY.

Firstly, the College of Governors argued that the Founding Bishop had not established anything in this matter that was contrary to the mind of the Council of Trent, nor that exceeded his authority; especially since it is to be presumed that the pious Bishop N. had deservedly obtained the best reputation for the Church, and had received greater instructions and privileges from the Holy See, during the interval that elapsed between the decree of the particular Congregation and the drafting of the founding instrument.

However, the Founding Bishop, guided by weighty reasons, had foreseen the good of his Seminary through the College of Governors, which consisted of learned men who had dedicated themselves to the well-being of the same Seminary; and since this seemed so appropriate, it should not be considered contrary to the law, but rather something added to the law.

Especially since nothing prevents pious founders from acting in this way. Therefore, the Founding Bishop, exercising his right, and with his blessing, the Seminary flourished, so that men constantly emerged from it, who were well-deserving in matters of learning, and also of the Church and the Holy See of Peter.

[*Latin ed. p. 659*]

OF THE COLLEGE OF DEPUTIES. 659 Furthermore, these same Deputies added that, in the present matter, they had not only observed a custom lasting more than a century, but that this same custom had been confirmed by the decree of the Apostolic Visitor, who declared that he was issuing this decree by virtue of powers granted by the Holy See.

THINGS BROUGHT FORWARD IN OPPOSITION. — In opposition, the following were noted, both by virtue of office and by the report of the administering Bishop: It was observed that the particular Congregation, established by the Most Holy See, had decreed that the deputations of the Seminary should be formed according to the model of a Council; therefore, the Congregation of Deputies had been established in opposition to the double prescription, both of said decree and of the Council of Trent; consequently, the founding Bishop, as being evidently lacking in authority, could not have established this, chapter 28 concerning the Office of Delegations, Pitonius, *De Controversiis*, 47. Furthermore, this deputed Congregation did not seem to conform to reason, either because it did not observe any distinction of offices, that is, there were no distinct members within it, those who were to oversee discipline, from those who were to oversee the economy; nor did it consist of persons taken from the Chapter and the Clergy; nor did it observe any rule of election, nor any permanence. Moreover, those who sat in this deputed Congregation were judges and parties, censors, and subject to censure. It could be reasonably inferred that

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inconveniences had resulted from this institution, both from other sources and from the fact that the Seminary had been brought to very difficult domestic straits not once, but repeatedly. With these things noted, it became apparent what value this *benda* held. For, although long-standing custom and usage are not a negligible authority, they are not yet so powerful as to overcome reason or law, 2 C. Concerning long-standing custom; especially since said custom was contrary to the Decrees of Trent, which reject contrary custom, as stated in *Const. Pii IV. In Principis Apóstol.*, Benedict XIV, *Instit. ecclesiastic.*, 60, n. 7, Card. De Luca, *De Canon. et Capit.*, disc. 83, n. 3. Concerning the decree of the Apostolic Visitor, it was also noted that it should be considered invalid, since it was issued contrary to the Council of Trent, and that special powers...

[*Latin ed. p. 660*]

660. OF THE BOARD OF GOVERNORS. to show that it was intended to be issued. For it cannot be believed that the Holy Pontiff, who sent an Apostolic Visitor to eradicate abuses that were contrary to ecclesiastical discipline, would have wished to grant unrestrained powers to that same Visitor to overturn or corrupt the very law, which is the guardian of discipline." Furthermore, in order to demonstrate the firmness of canonical discipline in this matter, the decree of the Council of Trent, session 23, chapter 18, on Reform, was cited. This decree mentions two kinds of Boards of Governors, the first of which concerns the Christian education of the students of the Seminary, regarding which it states: "All these things [namely, those concerning discipline], and other things that are suitable and necessary for this purpose, each Bishop, with the counsel of two Canons, the most senior and distinguished, whom he himself shall choose, as the Holy Spirit may suggest, shall establish, and he will take care that they are always observed, by frequent visitation, and by other means, etc." The second kind, which concerns the erection and endowment of the Seminary, must consist of four Governors, namely, two from the Chapter, one chosen by the Bishop, and the other by the Chapter itself; and also two from the clergy of the city, of whom one is chosen by the Bishop, and the other by the clergy." Since, however, after several other statements in the same chapter, mention is again made of the persons designated by these words: "The Bishop shall receive the accounts of the revenues of this Seminary each year, in the presence of two Governors from the Chapter, and of the same number from the clergy of the city," it was observed that a dispute had arisen as to whether a new kind of Board of Governors was indicated by these words. Although the authors differed in their opinions, the Holy Congregation of the Council resolved the controversy in the case of Arborea on March 31, 1855. To the question proposed: "Whether and how Governors are to be chosen to receive the accounts of the Seminary in the case [in question]," the answer was given: affirmatively, and that the accounts are to

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be received by four Governors, two from the Chapter, one chosen by the Bishop, and the other by the Chapter; and two chosen from the clergy, one chosen by the Bishop, and the other by the clergy. Furthermore, several older resolutions were added, which showed that the Holy Congregation adhered firmly and constantly to the decree of the Council (1). (I) See Appendix XXI.

[*Latin ed. p. 661*]

OF DEPUTIES OF THE SEMINARY. 66 Questions. I. "Whether, for matters both spiritual and temporal concerning the Seminary, a single congregation should be maintained, which was instituted by the Most Reverend Father (Episcopal See N.), and restored by the Apostolic Visitator; or rather, whether Deputations should be chosen according to the form of the Council of Trent, in this case." And, to the extent that the answer is negative regarding the first part, and affirmative regarding the second. II. "Whether five Readers of the Seminary should be added to the Deputations, as mentioned above, in this case." RESOLUTION. – The Holy Congregation of the Council, having knowledge of the matter, decided on August 27, 1864, to respond as follows: Regarding I, negatively to the first part, and affirmatively to the second. Regarding II, it is provided in the first. LEGAL OPINIONS AND INVESTIGATIONS. On August 31, 1861, June 1, and November 29, 1862, and April 27, 1866. Session 23, chapter 8, concerning the Reform, a summary was made. The most ancient and noble Chapter of the Cathedral Church of Bohemia in Pragae (1), consists of twelve Canons, of whom seven are of older institution, belonging to the ancient Chapter of St. Vitus; there is one canonical benefice which survived the suppression of the Collegiate Church of St. Apollinaris, and which, attached to the Cathedral Chapter, grants the possessor the title of Dean of St. Apollinaris; the remaining four were instituted over time in honor of St. John Nepomucene, and are therefore called "Joanneans." Among these Canons, four hold dignities, namely the Prefect, the Dean, the Archdeacon, and the Scholastic. A dispute arose concerning the nature of the Scholastic dignity; namely, whether it should be conferred by election or by option. (1) Among the more famous cases discussed before the Holy Congregation of the Council in the years 1861 and 1862, the present case is found, and it was reported in the public journals of Germany and Gaul.

[*Latin ed. p. 662*]

662 OF THE RIGHT TO BE DESIRED AND THE ASPIRANT. Indeed, there was no doubt that the positions of Prelate and Dean had never been conferred in any other way than through a capitular election, until the most recent agreements between the Apostolic See and the most pious Emperor Francis Joseph in the year 1855, by which the Prelate, as the highest dignity within the Chapter, was reserved for the appointment of the Roman Pon-

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tiff, while the election of the Dean remained with the Chapter, as before. However, the right concerning the conferring of the Scholasticate is not so clearly defined. In order to understand this, the following history must be noted. In ancient times, according to the decree of the Third Council of Lateran, chapter 1, title concerning Masters, schools were established within the Metropolitan Chapter of Prague for canons and other clergy of the Church, and the administration of these schools was held by one of the canons, who, by virtue of this office, was called the Scholastic, and who subsequently presided over all the schools of the entire Diocese, and received a special stipend for this service. However, through the fault of time and the wickedness of men, it happened that the University of Prague also subjected itself to this Scholastic's direction, and that the obedience of the Roman Church was diminished, so that the Scholasticate was retained only as long as he paid the duties of the Chancery and the custodian of the capitular records. The method of appointing the Scholastic, as it was in former times, is evident from a rubric in the constitutions of the Chapters, approved by the Archbishop of Prague in the year 1350, and later confirmed by the pontifical sanction of His Holiness Pope Pius II in 1458, in which it was decreed that the Prelature, the Deanery, the Archdeaconate, and the Scholasticate should be conferred through election. However, it was said that the method of election concerning the Scholastic had fallen into disuse for a certain period of time. But on January 9, 1681, with all the capitulars present, except one, and before the election of a new Dean, in order to avoid any collusion and to maintain fraternal charity, the following resolutions were made: that – the Archdeaconate, the Scholasticate, the Seniorate, the House or residences of the Chapter, the foundations and other altar furnishings, should henceforth not be elective, but should be conferred according to seniority, and that those holding them should be succeeded in turn by those next in seniority. – Indeed, this method and manner of advancement seems to have remained in force until the year 1787. In that year, Emperor Joseph II issued a decree on February 24 throughout the entire Austrian government,

[*Latin ed. p. 663*]

OF THE RIGHT TO APPOINTMENT AND THE OBJECTIONS. 663, which stipulated that the Scholasticate of the Chapter should henceforth be given to one who, having been appointed by the Emperor as Royal Inspector of the Diocesan Schools, was also a priest; but if he were a layman, the revenues of the Scholasticate would be given to him, while the dignity of the Scholasticate would remain suspended. Although this decree was offensive to the Holy Canons, it began to restore, in some measure, to the Church the office of inspection which had been attached to the Scholasticate of the Chapter in Prague. However, the Chapter, protesting against the intrusion of an external inspector in various ways,

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resisted, and, with its repeated and laudable efforts, obtained, through another decree issued by Leopold II on December 15, 1790, that, while the previous decree remained in force, a Canon of the Chapter should be preferred to any external priest in the nomination of the Inspector. Therefore, after such a disposition, the Chapter would propose several candidates from its own ranks to the Archbishop, from whom one would be appointed as Inspector of the Scholasticate, occupying the prebend and dignity; reserving only the necessary appointment of a Canon to the Chapter. This arrangement led to three appointments, which occurred during the vacancies of the years 1808, 1824, and 1834. Finally, the year 1855 dawned, in which a concordat was signed between the Most Holy Pope Pius IX and Emperor Francis Joseph, which, while well-deserved for the Catholic Church, disregarded the laws offensive to the Holy Canons: and in Article VIII, which pertains to our matter, the following is stated: "All teachers of elementary schools destined for Catholics shall be subject to ecclesiastical inspection. The Imperial Majesty will appoint the Diocesan School Inspectors from among those proposed by the Diocesan Authorities." On June 20, 1857, the Scholasticate became vacant, and, in a session held and convened according to custom on June 23 of the same year, in the absence of Canon N., who was absent due to illness, they requested the Archbishop "to make the necessary arrangements for a new Scholastic," and that, even in this case, the Chapter should enjoy the protection of the Archbishop, referring to the Imperial Decree of December 15, 1790, "so that his Majesty would deign to give special consideration to one of the Canons of the Chapter of Prague." The Cardinal Archbishop, there-

[*Latin ed. p. 664*]

664 OF THE RIGHT TO CHOOSE AND THE CHALLENGER. After the chapter's petition had been most graciously received, on September 5th of that same year, proceedings were initiated before His Imperial Majesty, to appoint Inspector of Schools for the Archdiocese of Prague, namely, the Reverend Master John M., a canon of the chapter. Meanwhile, Canon N., who was absent, was said to have been informed of the actions taken by the chapter in the preceding month of June. Finally, on October 2nd, along with two other canons, he declared to the chapter that he could not consent to what had been done. Indeed, he expressly protested, on the same day, October 2nd, against the appointment of an Inspector of Schools by His Imperial Majesty, arguing that the usurpation of the schools was rendered null and void by an irrefutable flaw, based on agreements most providentially concluded in the year 1855 between the Supreme Pontiff and the Emperor; and therefore, the right of choice, even with regard to the schools, had undoubtedly been restored, as was customary before the year 1787. However, on November 9th, the Archbishop, in informing the chapter of

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the Emperor's appointment of Canon M. as Inspector of Schools, suggested that the chapter grant the appointed individual access to the schools. The three canons, who considered themselves to have been neglected and to have had their rights violated, after the Cardinal Archbishop delivered his judgment on December 30th, in which the appointment of Canon M. was confirmed and the position declared to be elective, turned to the Apostolic See for defense of their cause. The case was presented to the Sacred Congregation of the Council three times, with the following questions posed at the end. The first time the case was presented, namely on August 31st, 1861, the Sacred Congregation postponed its decision in writing; it deliberated on the matter, and finally, on November 29th, 1862, it reached a decision, with the addition of a clause, and further. A synopsis of the arguments. We will only indicate the main reasons (1) which the Defenders presented with extensive learning in this entire case. (i) The cause of the Eminent Archbishop was defended by the Reverend Advocate Angelus Fazzi, while the cause of the canons was defended by Advocate Charles Modesti.

[*Latin ed. p. 665*]

RIGHTS TO BE DESIRED AND THOSE WHO OBSTRUCT. 665 — The option, being a most favorable and laudable practice, is introduced before the Apostolic privilege, either by a special statute of the Chapter, or by custom. Both, however, converged in a remarkable harmony concerning the granting of the Scholasticate of the Chapter of Prague. Whatever may have been contained in the ancient statutes of the Chapter, founded in the 14th century, and whatever may be said concerning their observance in the subsequent century, it was considered pertinent; and it was decreed by a deliberation of the Chapter on January 9, 1681, that, due to dissensions among the Chapter members concerning an unequal method of advancement to the Archdeaconate and the Scholasticate, so that fraternal charity might not be disturbed, the Scholasticate should henceforth be granted by option. It was not contended that such a law could be considered flawed due to the lack of explicit approval from the Holy See and the Archbishops. For, the tacit consent of the Bishop is sufficient for the validity of a Chapter statute. Furthermore, it was asserted that there was also a presumed and actively existing consent of the Apostolic See; for, when a "centenaria" is involved, it is not only presumed that the statute has been ratified and approved by all the Archbishops of that time, but also that the good pleasure of the Apostolic See is presumed; since a "centenaria" implies a higher title in the temporal realm, and consequently, a confirmation of the statute made in a specific form by the Apostolic See, as the Holy Rota has often affirmed. Moreover, it was added that the Chapter has full power to establish even without the Bishop or the intervention of the Holy See, whenever the statute does not diminish the divine worship or the ecclesiastical office; therefore, it should be held that this statute was established with the best of

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rights. Furthermore, this statute concerning the option for the Scholasticate of Prague is not the only one; it is also confirmed by a long-standing custom and observance. This observance was not destroyed by a subsequent custom from the year 1787 to the year 1857, during which three provisions were made by the Chapter instead of an election. This occurred because of the injunctions of the Imperial authorities; therefore, if the Chapter said or did anything during that time, it was compelled by necessity; moreover, what is accepted due to necessity should not be used as an argument, as taught by Paul, the jurist, in I. 162/f. concerning the Rules of Law. But even with a new custom established, the previous one is not abolished; for, the rule in the forum is: "Centenaria" is not abolished unless... DEFENSE OF THE CANONICAL RIGHTS.

[*Latin ed. p. 666*]

666 OF THE DESIRABILITY OF RIGHTS AND OF ATTEMPTS AT SETTLEMENT. by another entirely accumulated hundred, which was not applicable in this case. After these things, the Defender proceeded to refute the difficulties that were raised. He argued that the act of the Chapter, by which provision had been made for the Eminent Archbishop during this last vacation of the Scholasticate, as was customary before the Concordat, could not be considered a Compromise (1). The Defender observed that such a Compromise was lacking in validity, both due to a lack of authority and a lack of form. For, in order for a valid Compromise to be made, the consent of all Canons is necessary; but in fact, it was established that two of the Canons called to the Chapter meeting had not been present. Nor could that rule of law be alleged, namely, that the majority may impose its will on the minority. For this rule applies only when all those who were to be called have actually been called; but in this case, the two aforementioned Canons had not been notified; and therefore, the Compromise was invalid due to a lack of authority. Furthermore, the resolution of the Chapter could not be called a Compromise, since it was neither issued nor received as a Compromise. Moreover, the Defender maintained that, according to Article Eight of the praised Convention, the Imperial Majesty appoints the Diocesan School Inspectors from those proposed by the Diocesan Bishop; and therefore, the provision of a Scholastic Canon must be subject to this law. For the office of the aforementioned Inspector is not necessarily to be conferred upon a Scholastic Canon; and he demonstrated this with the example of other Chapters within the same Austrian Empire. For in the same Article Eight, no mention is made of the granting of a Scholasticate to a Canon. Therefore, since the Scholasticate, during the seventeenth century, passed into a purely personal holding due to the lack of an attached office, it should be conferred in the manner in which it was conferred before the infamous Josephinian laws, namely, through option. Especially since, if it were otherwise, the effects of the Josephinian laws would persist in the

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Prague Chapter, contrary to the intention of the Concordat.

(1) A Compromise is an agreement by which those who disagree submit their dispute to the judgment of someone or some people, and promise to abide by that judgment.

(2) It is said that a certain dignity of a Chapter passes into a personal holding when, with the cessation of the jurisdiction it previously held, it retains only the privileges of honor.

[*Latin ed. p. 667*]

The MOST DESIRED and ATTENDED [case]. 067 Furthermore, the Defender refuted an objection, which could be derived from Chapter 18 of Session 23 of the Council of Trent concerning Reform; in which it is stated: "Moreover, offices, or dignities, which are called scholastic, shall not be conferred except upon Doctors, or Masters, or those licensed in Sacred Scripture, or in Canon Law, and other suitable persons, who are able to perform this office by themselves; and otherwise, the provision shall be null and void; notwithstanding any privileges, and customs, even venerable ones." The Defender argued that the Council of Trent spoke of Masters, who are actually obligated to teach; and not of mere Inspectors, such as the scholastic of Prague. And if the suitability, which the Council of Trent requires of a Canon Scholastic, were required in the present case, such suitability could not be lacking in the scholastic of Prague, although this is granted by option. For no one can be a Canon in the Prague Chapter who is not a Doctor or a Licentiate in Theology, or in Canon Law. Having considered these and other things, the Defender concluded that the provision of Canon M., made in the manner described above, is to be rescinded, and furthermore, that the offenses must be purged. For he maintained that the offenses must be purged not only through the means of nullity; but also through the strict restitution of fruits and the expenses of the litigation, even extrajudicially, in order to compensate for all damages. He maintained that the offenses were committed in two ways: first, before the appeal of the Canons, due to the admission of Canon M. to the stall and the granting of the scholasticate before the decree of admission was announced to the appellants; and second, because, while the appeal was pending, the name of the same Canon M. was inserted in the catalog of the diocesan clergy, above the other five Canons, who by order of seniority preceded him.

DEFENSE OF THE MOST EMINENT ARCHBISHOP. — Among the many things that were copiously debated by the Defender of the Most Eminent Archbishop, only a few can be considered here. In the chapter statutes confirmed by the Roman Pontiff Pius II, it is written: "When the Archdeaconry of Prague, and the scholasticate are vacant, the Chapter can freely choose from the church, or outside of it, suitable persons, whom it believes will be more beneficial to the honor and utility of the church." Furthermore, the Defender argued that the act of the Chapter of January 9,

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1681, which is presumed to be adverse,

[*Latin ed. p. 668*]

668 OF THE RIGHT TO NOMINATE AND THE ACCUSER. The accuser argued that the transformation of the scholasticate from an elective position to an appointed one was invalid, suffering from nullity, both for other reasons and, especially, because a capitular decree cannot override statutes strengthened by Apostolic authority. Indeed, presenting supporting documents, the accuser maintained that the Chapter did not intend to establish a firm legal norm with this action, but rather an entirely arbitrary, or optional, one; and the accuser asserted that the right to nominate had existed from the year 1714 to the year 1763, that is, during the period in which the office of the scholastic inspector remained suspended due to internal wars and civil disturbances, causing schools to fall silent, until the office of the scholastic inspector was revived, and immediately conferred by election, according to the law of Trent, chapter 18, session 2, which states: "Otherwise, any provision made shall be null and void, notwithstanding any privileges and customs, even those of long standing." The accuser cited this law of Trent because the office of scholastic requires the suitability of the person and their diligence. Therefore, just as no one can choose to be designated as a theologian or confessor; so neither can anyone attain the scholasticate through nomination, but only through election. Having defended this principle of the right to election, the accuser observed that the canonical resolution, by which, with the consent of all canons, except one, it was decided that the custom and practice of electing a new scholastic should be maintained, which had been in force for almost fifty years, was canonically invalid. The accuser maintained that there could be no doubt about the legitimate convocation of the Chapter, because Canon N. did not object immediately, but after a long interval from the knowledge of the Chapter's resolution; and especially because, according to the custom of that metropolitan church, the convocation had been announced in the customary manner. Therefore, neither Canon N., who was absent at that time, nor the other three present and voting, could have objected to the contempt. Especially since the matter that the Chapter had entrusted to the Archbishop had already been begun and ordered for execution, as they themselves should have acknowledged. For whatever a mandatary does, he should be considered to have done in the name of the one who gave the mandate. But insisting on his point, the accuser also argued from the most recent law, both of custom and, especially, of the Concordat.

[*Latin ed. p. 669*]

THE RIGHT TO APPOINTMENT AND THE CHALLENGER. 609 action should be carried out in the future in the same manner as it had been up to that point, since the year 1790. The Advocate, therefore, insisted that

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the custom, which had been established through three nominations in the years 1808, 1824, and 1834, should continue, citing the transaction initiated with Leopold II as justification. He demonstrated that neither the transaction nor the observance had been revoked by the Concordat, citing articles VIII and XXXIII of the Concordat. In article VIII, as we have already stated, it was agreed that the Ordinary should nominate an Inspector of Schools appointed by the Emperor; and in article XXXIII, it is stipulated: "In all other matters, everything should be governed by the existing discipline of the Church." Therefore, the Concordat in no way abolished the Chapter's right to appoint, but rather confirmed both the Archbishop's proposal and the Imperial nomination. He further argued that this was especially important in the case of the Chapter of Prague, unlike the other Chapters of the Austrian Empire, because the office of Inspector of Schools was intrinsically linked to the Chapter's foundation. Furthermore, the Advocate, addressing the issue of the challenge, observed that the canonical institution for the granting of the scholasticate had existed and therefore the challenge was invalid. For both in law and in fact, those two essential elements were lacking, which are required by law for the validity of such challenges, namely, legitimate possession in the one challenged, and usurpation in the one challenging. Even if it were admitted that the right to appoint did not exist in the petition, it would still be sufficient for the maintenance of possession, namely, the last valid status, which in this case is the nomination of the year 1834, through which the scholasticate in question was established. The last valid status must always be considered when dealing with the maintenance of possession, unless it is clearly established by a judicial decision, or by the confession of the party, or by a foundation so clear that it admits of no exception. Especially since the appellants did not mention the canonical institution of the scholastic in their appeal, and in the petition they intended to initiate an action only regarding possession, and not regarding the validity of the appointment itself. After considering these matters, which are complicated by a very extensive cause, the following formulas of doubt were proposed to the Sacred Congregation of the Council. Doubts. I. "Whether, in this case, the right to appoint to the dignity and to grant the scholasticate is established."

[*Latin ed. p. 670*]

670 OF THE DESIRABILITY OF APPOINTMENTS AND OF RIGHTS. Or rather, II. Whether and how the Decree of the Most Reverend Archbishop of the day of December 30, of the year 1857, and the right of electing through the Chapter, in this case, is maintained. III. Whether it is established concerning attempts, so that and how there is a place, and of their purgation in this case. RESOLUTION. The Sacred Congregation of the Council, on June 14, 1862: after discussing the matter, judged it proper to respond: To I. Negatively. To II. The Decree is maintained. To III. Negatively.

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In the re-presentation of the case, on November 29, 1862, after the case was again discussed, the S. C. remained in its previous decision, with the addition of a clause and more (1). FROM WHAT IS COLLIGATED: I. The Scholasticate, of which we are speaking, was elective, both by the Statutes of the Chapter, confirmed by Apostolic authority, and by reason of the annexed office which requires an election. II. It could not legitimately be made elective, with the office of the Inspector of Schools in force, especially after the Council of Trent. III. With the office of the Inspector ceasing, and with internal dissensions, and with other changes harmful to the Catholic Religion, the granting of the Scholasticate could have been obtained through laws of appointment. IV. Finally, with the office of the Inspector restored in substance to the Church, the former right should have revived, especially considering the nature and foundation of the grant; which, in fact, it did, although this occurred through the intervention of a secular authority lacking jurisdiction in this matter? (i) When a Canon Scholar, having died, and when some from the Chapter again maintained that the granting of the Scholasticate belonged to the Chapter by the right of appointment, the Archbishop, consulting the Sacred Congregation of the Council on this matter, received the following response on April 27, 1866, in these words: "Having received the letters of Your Eminence in the Sacred Congregation of the Council, the Most Reverend Fathers have been commanded to write to Your Eminence and to signify to him, concerning the collation of the vacant Dignity and of the Scholasticate, that it has been sufficiently provided for by the resolutions of the Sacred Congregation of the days of June 14 and November 29 of the year 1862 concerning the same matter, which, therefore, the Sacred Congregation commands to be held as the norm and rule, both in the present and in future provisions of the aforementioned Dignity and Scholasticate, with all that pertains to them."

[*Latin ed. p. 671*]

OF JURISDICTIONAL CLAIMS AND OBJECTIONS. 67. Therefore, having observed this law, the place could no longer claim a right of choice, even though the right to choose, whether ancient or newly revived, had legitimately been subject to some derogation by the law of the Concordat.

—• 68. REGARDING THE MAINTENANCE OF SEMINARY STUDENTS. May 6, 1865. Summary of petitions. The Pro-Vicar General of the diocese of N., having presented a petition, stated that the Chapter had the right to choose certain students to be maintained and educated in the Seminary. Since one was to be chosen from among five who had petitioned for admission among the Seminary students, one of whom had already completed the age of 12 years, while the others were considerably younger, a doubt arose, considering the disposition of the Council of Trent, Session 23, chapter 5, concerning reform, as to whether, in the election to be made by the Chapter, only those who had completed the age of 12 years should

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be subject to the vote, or whether the others should also be included. After these petitions were presented, the same Vicar was asked to report what was stipulated in the Seminary regulations regarding the age of students to be admitted, who reported that in such regulations, no specific age was defined, and that, according to custom, young people of various ages had been admitted.

WHAT WAS TO BE OBSERVED EX OFFICIO. It was noted, ex officio, that the Council of Trent, Session 23, chapter 18, concerning adolescents who should be received into the Seminary, prescribed: "In this College, let those be received who have completed at least twelve years, and who have been born of a legitimate marriage, and who know how to read and write competently, and of whom the character and will give hope that they will perpetually serve in ecclesiastical ministries." Therefore, since the disposition of the Council of Trent was so clear, it did not seem possible to doubt that, of the five adolescents, that one who had completed the age of twelve years should have some special right to be considered in the election.

RESPONSE. 69. The Congregation of the Council decided on May 6, 1865: Let the disposition of the Council of Trent be observed.

[*Latin ed. p. 672*]

From the Congregation of Bishops and Regular Canons. Decree concerning the faculty of hearing confessions granted by the Prior of the Order of St. Augustine. Dated June 3, 1861. Summary of the matter. The Prior of a Convent of the Order of Eremites of St. Augustine, due to certain questions arising concerning jurisdiction, proposed the following to the Holy Congregation for resolution: "A Religious, using the faculty obtained from the Prior of his Convent, confesses to a secular priest, and indeed, an approved one: I. Is this valid? And, if affirmative: II. Whether the Prior can validly grant this faculty to his subjects, or not." Before such doubts were presented to the Holy Congregation, the opinion of a Consultor was sought, which, after deliberation, was heard. Also present was the Reverend General Vicar of the Order in question, who, among other things, noted that in the Constitutions of the Order, paragraph 1, chapter 8, it is written: "To hear the confessions of any priests of our Order, and of clerical brothers, lay brothers, converts, and novices, the Priors, in their respective convents, may delegate those who are more experienced in age, doctrine, and life." The following paragraph is added: "However, we forbid any brother from confessing to an external priest, whether religious or secular, if he has the opportunity to have a priest of our Order." The Reverend General Vicar noted that the word "we forbid" does not restrict the Prior's faculty, especially since in the prologue of these Constitutions, it is stated: "Furthermore, the Prior has the faculty to grant dispensations with his brothers in his Convent, when it seems expedient to him; except in those cases in which some Constitution expressly prohibits dispensation." He stated that

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the prohibition mentioned is not reserved to the Provincial or General, and therefore, it follows that the Convent Prior can, with his subjects, dispense in this matter, when it seems fitting to him.

[*Latin ed. p. 673*]

ORD. EREM. S. AUG. SUPER FAC. ELIG. CONF. 673 «it is fitting. And if any doubt remained concerning this matter, he cited the eighth paragraph in the aforementioned Preface, in which it is written: 'If, at any time, any doubt should arise concerning our Constitutions, the interpretation and declaration of the Reverend General shall prevail.' With this authority granted, the General declared the question to be settled, since it was clear that, from time immemorial, local Priors had granted such powers, and that the General Chapter had never objected. The opinion of the Consultor is summarized below. The Consultor (1), in treating the question according to the norms of common law, observed at the beginning that, in any society where there is no Governor, the people will revolt, prov. 11: this is most clearly verified in religious families, whose members are bound by a vow of obedience. Furthermore, Superiors of Regular Orders are true prelates to whom spiritual jurisdiction is granted by the Supreme Pontiffs, precisely because they are exempted from episcopal jurisdiction (2) Suarez, vol. 4, on Religious Matters, treatise 8, book 2, chapter 1. And this power is called 'ordinary' by the canonists, and not 'delegated' (3), because it is the same Superiors who, by virtue of the law, or by their office, obtain this power. It is 'delegated' because it is a certain portion of power, a privilege granted by the Supreme Pontiffs, and therefore subject to the ecclesiastical canonists, who do not absolutely distinguish between 'delegated' and 'ordinary' power; rather, they understand that power, whether extraordinary or ordinary, is conferred by an act, and therefore is 'ordinary' power. Therefore, when 'delegated' power is understood in this sense, it is opposed to 'ordinary' power, which is not conferred by an act, but is granted by the force of office, as, for example, the power of the Superiors of Regular Orders, which is said to be 'ordinary,' and not 'delegated'; but it is exercised in their own name, and does not cease unless, speaking absolutely, one says that it is 'delegated' power. It is 'ordinary' because it belongs to them by law, by reason of their office; but when the office ceases, the power ceases legitimately. Let it not be thought that this distinction of legal categories is useless; for, from the different nature of power, different legal effects derive, which it is not necessary to enumerate here. Ce- and-constituti Acta, vol. I, section XL, no. 43.

[*Latin ed. p. 674*]

674 ORDER OF EREMITE MONKS. St. Augustine, on the Election of Abbots, Navarr. Council, 2 of Regid, n. 63; and it is said to be a jurisdiction almost episcopal, according to what the Doctors teach. Clement, on Eccle-

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siastical Matters, uses the words "Proprii"; and from Abbot, on Privileges, in 6, the reason being that, just as Regular Prelates are not subject to Bishops, but are immediately subject to the Roman Pontiff: so in jurisdiction, they succeed in the place of Bishops. Suarez, in the cited place, chapter 2, § 13. Furthermore, the Consultor distinguished three kinds of Regular Prelates, namely those who hold the lowest, the middle, and the highest rank, according to the jurisdiction they possess. For the supreme jurisdiction belongs to the General, the middle to the Provincial, and the lowest to the local Superior, or Convent, or whatever it may be called, Prior or Guardian, etc., and the lowest jurisdiction is the subject of this discussion. Suarez, in the cited place, chapter 22, states that "if generally power is granted to Prelates, or to a Prelate, it must be said to be granted to the Conventual Prelates." Also, Navarr, in chapter "Non dicatis," in the regular doubts, uses the words "Prelates" in addition n. 2, and Portec, in the regular doubts, uses the words "Guardian" n. 1, stating that "whether in the Rules, or in the Constitutions of the Orders, or in the Bulls, or in the privileges of the Supreme Pontiffs, the word 'Prelates' is used indistinctly, even the Guardians are understood." Also, Passerin, on Human States and Offices, question 186, article 8. But more authorities (1) show that the power of local Superiors over their subjects is an ordinary power, and almost an episcopal power. This is also derived from the privilege granted by St. Pius V to the Fathers of the Order of St. Dominic, which Passerin recounts in his book on Privileges, page 127, and Lezzana, on Obligations, raises the question, which seems to be an anomalous power among the authors, whether the power of the General Vicar is an ordinary power or a delegated power, and from the legal sense of this question, the judgment depends on another question: namely, if something is sent to be done, either by law or by the Holy See to the local Ordinaries; immediately the question arises: whether the General Vicar can do this by himself. If their power is to be considered an ordinary power, he will be able to do it; otherwise, if it is delegated. (1) Pigliateli, vol. 10, consultation 25, n. 1; Rodríguez, vol. 1, question 12, article 4; Laurea, in lib. 1 Decret, question 90; Fagnan, in cap. "Ad"; etc.

[*Latin ed. p. 675*]

ORDINATIONES EREMITICAE SANCTI AUGUSTINI, SUPER FACULTATE ELIGENDI CONFESSORES, cap. 675, Reg. c. 18, n. 3, per cuius privilegio conceditur facultas absolvendorum a peccatis reservatis laudatis Patribus "sive Priori conventuali," sive superioribus Praelatis, ut ipsi per se ipsos id omnino possint in fratres, et moniales dicti Ordinis sibi subditos, quod "possunt Episcopi in Clericos et laicos sibi subditos." Ex qua ratione potestatis Superiorum localium, Consultor inferre potuit, posse eosdem Superiores licentiam concedere subditis (si non obstet aliqua specialis Regula, vel Ordinis Constitutio) peccata sua confitendi extraneo Sacerdoti. Lezzana, loc. cit., num. 25 et 27. Quibus

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adiungebat auctoritatem Bordón, qui hunc casum resolvendum sibi proposuit de potestate Praelatorum, resol. 2, n. 23: "An Superiores locales, quandoque hanc facultatem (confitendi) possint pro suis subditis delegare aliis Sacerdotibus extra Religionem, dando licentiam ipsis subditis, ut extra monasterium eligant Confessarium?" Et respondet: possunt; quam responsionem idem Auctor rationibus illustrat. Item, Diana in tractatu de dubiis Regularium, resol. 11, sibi quaerit: "An Guardiani, Priores, Praepositi etc. Regularium possint illis praebere licentiam, ut eligant Confessarium extra Religionem?" Affirmative respondeo, seclusa Constitutione religionis, vel statuto in contrarium: et ratio est, quia qui habent ordinariam potestatem possunt illam alteri delegare (1), ut habetur in cap. Quib. de Officio Ordinarii, et notat Silvius in additione, ad tertiam partem Sancti Thomae." Quare Consultor opinabatur, ad propositum dubium posse responderi: ad utramque partem affirmative, dummodo non prohibeatur a Constitutionibus Ordinis.

EA QUAE EX OFFICIO ADDIERUNTUR. — Observabatur insuper ex officio, Religiosos teneri confiteri peccata sua Religionis Confessariis, quemadmodum tradit Benedictus XIV. in Constitutione Quod communi diei 30 Martii 1742, qua legitur: "Quod communi auctoritatis iuri innixum in Religiosis familiis, etiam per peculiares generalium Comitiorum sanctiones, in aliquibus Ordinibus praeceptum statutumque est, ut nimirum alii (1) Hic est unus ex iuridicis actibus, qui vi ordinariae potestatis exerceri generaliter possunt.

[*Latin ed. p. 676*]

676 ORDER OF CONFESSION. ST. AUGUSTINE, ON THE BENEFITS OF THE FAITH, BOOK 1, CHAPTER 12. "To every member of any institute, his sins must be confessed only to those of the same religion, for those who are instructed in all the matters to be observed and avoided within that religion, are more readily able to apply the remedy for sins, to confess, and to obtain absolution, etc." By this constitution, the same Pope granted to the three Minor Orders of St. Francis, that those living outside the convents, for just causes and with the permission of their Superiors, may confess their sins to an external confessor. Also, Clement VIII, in the constitution of the Roman Pontiff of November 13, 1599, declaring the faculty of choosing a confessor, which is not subject to the Regulars by the Bulla Cruciata, decreed: "With regard to the administration of the Sacrament of Penance, or confession, which are subject to the disposition of their Prelates, We declare by the authority of these present that We perpetually declare." To these same Prelates, We command and exhort that they show themselves benign and merciful to their subjects in the exercise of this power." From this constitution of Clement VIII, Giraldi, in *Jus Pontificium*, p. 2, section 105, paragraph 6, holds that by the term "Prelates" are meant the Generals and Provincials, and not the local Superiors, with whom this jurisdic-

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tion does not belong, as if they were bishops. However, it has sometimes been disputed as to whom the term "Superior" should be understood to mean in the Tridentine words, session 25, on the Religious Orders, chapter 19, before whom a Regular should appear if, within five years, he acts against the validity of his religious profession, for there it is written: "before his Superior and Ordinary." However, the Sacred Congregation of the Council judged that the term "Superior" should be understood as the local Superior, or the convent in which the Regular made his profession; and this judgment was confirmed by Benedict XIV in the constitution *Si datam*. The same applies when it is a question of dispensations for Holy Orders, according to the constitution of Clement VIII, of March 15, 1596, from which also arises the question as to whom the term "Superior" of the Regular should be understood to mean; nevertheless, canonists agree that by the term "Superior" the Superior of the convent should be understood, whether he is called Prior or Guardian, etc., unless it has been stipulated in the constitutions of the Order that such faculty pertains only to the General or Provincial, as was decided by the Sacred Congregation of Bishops and Regulars in the case of the Order of the Minor Conventuals, or Assisians, concerning the right to grant dispensations, on September 22, 1854.

[*Latin ed. p. 677*]

ORDINATIONES ET RESCRIPTUM SACRÆ CONGREGATIONIS SUPER FACULTATE ELIGENDI CONFESSORES, 6, 7, 7. Cum ergo, in re tam momenti, Superior localis valere possit eiusmodi iurisdictionis actus, concludebatur, a fortiori, posse Superior localis concedere licentiam in questione de qua agimus, videlicet, si non resistat specialis Ordinis constitutio, concedere potest licentiam suis subditis confitendi peccata sua Confessario Regulari alterius Ordinis, vel etiam Sacerdoti saeculari, dummodo tamen hic a suo Ordinario fuerit approbatus ad excipiendas Sacramentales confessiones, prout definivit Sacra Congregatio contra sententiam quorumdam Auctorum in Hildesimo, die 1 Septembris 1769 (1). Hisce confirmata opinione Consultoris, proponebatur resolutio dubii: "An et quomodo respondendum sit duobus propositis in casu."

RESOLUTIO. — Sacra Congregatio Episcoporum et Regularium, re in examen revocata die 3 Iunii 1861, respondere censuit: In Ordine Eremitarum Sancti Augustini, affirmative ad utrumque, dummodo Sacerdos fuerit ex approbatis ab Ordinario; pro aliis Ordinibus, standum eorum Constitutionibus et statutis.

Ex hoc colligimus: 1. Facultatem de qua agimus, inspecta Doctorum doctrina et iuris communis principiis consentanea, posse concedi a Superioribus localibus, subditis suis. (1) Casus Sacrae Congregationi Concilii propositus in dicta Hildesimo, prout in folio tunc exarato exponebatur, est qui sequitur: "Usus invaluit in civitate Hildesimo, ut nonnulli Regulares ad civitatem ipsam pluribus infra annum vicibus

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accedentes, ibique per aliquot dies commorantes, soleant sibi eligere presbyterum saecularem ab Episcopo non approbatum, qui eis sit a confessionibus, quamvis non desint, qui vel ex saecularibus, vel ex Regularibus, propriaque cuiusque Ordinis familia, de Episcopi vel Praelati Regularis licentia confessionem excipiant: Id minime ferri posse censet Episcopus; sed in re tam gravi ne quidquam decernat inconsulta Sede Apostolica, pro eximia in eam opinione ac reverentia, dubia, quae in calce exhibentur, declaranda proponit." Dubia autem iuerunt sequentia: I. "An tales Confessiones licitae sint in casu?" II. "An ignorante Episcopo validae fuerint?" III. "An Episcopo sciente et contra dicente in posterum peragendae, validae futurae sint in casu?" Sacra Congregatio, re mature perpensa, respondit: negative in omnibus.

[*Latin ed. p. 678*]

678. ORDER OF HERMITAGE. St. Augustine, on the subject of ecclesiastical exemptions, Canon II. However, this doctrine must be understood with the limitations established by the Constitutions and Statutes of any Order, since these constitute a particular law. III. No Religious Order can grant its members the faculty to confess their sins to a secular priest who has not been approved by the local Ordinary; and if such a confession is made, the absolution is invalid. ORDER OF PREACHERS. March 2, 1866. Summary of the case. The following question, proposed by the Reverend General Procurator of the Order of Preachers, is no less elegant than useful, and he presented it to the Most Holy Congregation: "It is prescribed by the laws of the Order of Preachers that, 'if' the Provincials know of any religious who are insufficient and less suitable for hearing the confessions of the laity, setting aside all human considerations, they should suspend them, burdened with conscience, if they have replaced inept ministers in that office." And in Lucius Ferraris, *Tractatus de Approbatione*, article 2, number 20, it is stated: "The General of the Regular Canons can authorize his subjects, or those of his predecessors, or of any other superiors, to hear confessions; he can also suspend them from hearing such confessions, even for a hidden reason, and extrajudicially, as declared by the Most Holy Congregation of Bishops and Regular Canons on June 3, 1617." With these premises, and with the opinion that has gained strength, according to which Superiors of Regular Canons cannot suspend their subjects from hearing the confessions of the laity, because it is said that the power of jurisdiction is not received by the Superiors of Regular Canons, but by the Bishop or Ordinary; hence, to address the doubts in this matter of such importance, the Reverend Procurator proposed five doubts, which are presented at the end. Before the question was presented to the Holy Con-

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gregation, the Consultor was heard, who expressed the following opinion.

[*Latin ed. p. 679*]

OF THE ORDER OF PREACHERS. 679. The opinion of the Consultor, reduced to a summary. The Consultor observed that the reason for the difficulty of this question lay in the diverse opinions of Theologians and Canonists concerning the origin of jurisdiction, and the means by which this jurisdiction came to Regular priests. For, most authors agree that the jurisdiction of the Regulars is derived from the Apostolic See, which confers it upon the Superior of the Order, and from him it is diffused to the inferiors, in much the same way as Bishops approve secular priests to hear confessions in their own dioceses. Thus, Suaresius explains it in *Opera*, De Relig., I, 9, chapter 2, and in the *Tractatus de Poenitentia*, dispute 28, sections 3 and 4. Therefore, those who follow this doctrine infer that, since the Supreme Pontiff immediately confers jurisdiction upon the Superior, who delegates it to his subordinates, either immediately or mediately through Provincials or local Superiors, no absolution given to secular penitents by a Regular priest has any validity, if that delegation has been withdrawn from those Superiors.

However, the Consultor observed that the contrary opinion is more probable and more common, which holds that not only approval, but also jurisdiction, is granted to the Regulars by Bishops in their respective dioceses, to hear the confessions of the laity. From this doctrine follows that any sacramental absolution given to a secular person by a Regular priest to whom no approval and faculty has been granted by the Ordinary is invalid and null. Thus, Benedict XIV, in *Opera*, De Synodo Dioecesana, I, 9, chapter 16, sections 7 and 8, adhering to the authority of the Council of Trent, session 23, chapter 15, concerning reforms, and also to various Pontifical Constitutions. The same is confirmed elsewhere, especially in book 2, chapter 3, section 2, where he refers to the Resolution of the Sacred Congregation of the Council of April 18, 1722, in which it was decided that the Capuchins, who exercised their ministry on pontifical ships, could not receive confessions in the city of Centumcellae without the approval of the Bishop.

Given, therefore, (the Consultor continued), that the Regulars, especially the Mendicants, have, by a privilege granted to them, jurisdiction to absolve, as Suaresius teaches; nevertheless, the Roman Pontiffs...

[*Latin ed. p. 680*]

680 OF THE ORDER OF PREACHERS. It cannot be permitted to grant such power to them without the approval of the Bishops, within whose dioceses the sacrament of penance is administered by them. Therefore, although superiors of religious orders may prevent their subjects from hearing confessions, and may forbid them from administering the Sacrament of

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Penance, this does not take away the power of validly absolving, which the religious has received, not from his superior, but from his Bishop, or, if it pleases, from the Roman Pontiff, but with subordination to the approval of the Bishop. Therefore, it follows that those subjects who are reluctant, and who despise the obedience due to their superiors, if they do not abstain from administering this sacrament to those to whom it has been forbidden, indeed sin; but if they do absolve, their absolution is valid. And this concerns the validity, or invalidity, of absolution given by a religious priest to seculars, contrary to the prohibition of their superiors. Regarding the other question, namely, whether he who gives an invalid absolution incurs a penalty, the Consultor observed that a similar question had been discussed by Charles Antony in *Thesaurus*, part 2, chapter 2, in this chapter, entitled: "Absolution given by a priest not approved, or by a subject alien to him, without competent license." The author there poses the following question: "It can be asked, whether such a priest, knowingly absolving without approval, or without competent license, incurs the penalty of irregularity?" And he answers: "He does not incur that irregularity, which those incur who usurp the act of the sacred Order, which they do not have; because here, he does not usurp the act of the sacred Order, since he is truly a priest, but he usurps the act of jurisdiction which he does not have: to which usurpation the aforementioned penalty of irregularity is not imposed." From these indicated passages, the Consultor inferred what he believed should be answered to each question.

THOSE THINGS WHICH WERE ADDED EX OFFICIO. — Adding the Decree of the Council of Trent, session 23, chapter c. 15, concerning Reform, in which it is read: "No priest, even a religious, can hear the confessions of seculars, even of priests, nor can he be considered suitable for this, unless... he obtains... approval... from the Bishops; notwithstanding any privileges, and any custom, even if long forgotten": the Sacred Congregation of the Council has constantly held, ex officio, that...

[*Latin ed. p. 681*]

OF THE ORDER OF PREACHERS. 681 It is necessary for the authority of the local Bishop, so that the Regulars may be able to hear the confessions of the Seculars. Indeed, a question was proposed: in the cause of the jurisdiction of Chaplains, on the 6th of March, 1694, in Lib. 44 Decret., fol. 79: "Whether Chaplains, whether under rule or secular Catholics, can administer the Sacrament of Penance to soldiers in garrisons without a special faculty from the Apostolic See or the license and approval of the Ordinary, to whose diocese it happens to belong." The answer was: negatively. This answer was confirmed in Frisigen, on the 29th of January, 1707, in Lib. 37 Decret., and in the aforementioned opinion from the Consultor in Viterbo. The Most Holy Lords, on the 18th of April, 1722, also observed that, with certain reasons added, these answers concerned not only the lawfulness,

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but also the validity. However, this seemed to be contradicted by a Resolution of the Sacred Congregation and the Regia, which, according to the Authors, was published in the year 1617 (1). In this case, therefore, the following petition was presented, which we translate almost verbatim from the Italian exemplar: "The General of the Theatines beseeches Your Eminences to deign to declare whether he can suspend his subordinates, approved by his predecessors, from hearing confessions, even for hidden faults... even extrajudicial ones, and as it has seemed to the General Chapter, for the good governance of his Religious Order (2)." "The Sacred Congregation of Cardinals, Prefects, decided that the General can suspend his subordinates from hearing confessions for any reason, even for hidden crimes, in any way, even extrajudicially." Rome, 2nd of July, 1627. Cardinal S. SIXTI P. (1) By error, this resolution is said by the Authors to have been published in the year 1617, when it was diligently sought in the Vatican Archives, and finally found with the date of the 2nd of July, 1627. (2) The General of the Theatines (so in the Italian exemplar) humbly supplicates: "Your Eminences, deign to declare, whether he can suspend his subordinates, approved by the Generals of his predecessors, from hearing confessions, for hidden faults... and as it has seemed to the General Chapter, for the good governance of his Religious Order."

[*Latin ed. p. 682*]

682 OF THE ORDER OF PREACHERS. With this matter having been brought up, reference was made to a passage in the Constitutions of the Theatine Order, Chapter on the Administration of the Sacraments, which states: "Priests who are assigned to hear the confessions of lay people must be chosen carefully, and although anyone may be experienced and have reached a suitable age, it is necessary to ensure that they are not admitted to this office unless they are found to be suitable, and only with the permission of the General [Superior]... Before anyone is sent to the local Ordinaries to obtain permission, or to receive the Orders, or to hear confessions, he must first be thoroughly examined at home by the Prefect and the Fathers appointed for this purpose. Those who have been admitted to hear confessions must not begin to do so until permission has been granted to them by their Prefect." Alexander, a priest of the same Regular congregation, who wrote at the same time that the aforementioned Resolution was issued, in his commentary on this chapter of the Constitutions, presents the following cases among others: "Let us suppose that a priest who has already been admitted to hear confessions by the General and the local Bishop, by his Prefect, and for some just cause, is forbidden by his superior, without a judicial process, to hear confessions, and he, in defiance of this prohibition, hears confessions and grants absolution; is the validity of these confessions in doubt? I answer that they are valid, and the reason is: because this is not a deprivation or suspension, which is usually carried

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out through a judicial process, but a simple prohibition, which does not invalidate the act; it is true that the priest may be punished by his superior for disobedience; so teaches Sotus, and other authors whom he cites." After these words, he immediately presents another case in these terms: "It may be doubted whether the General can suspend his subordinates, who have already been approved by himself or by his predecessors, from hearing confessions, even for a hidden crime that is known to him, without a judicial process. I answer that he can, and this has been declared by the Sacred Congregation. The wording of this declaration is: The Sacred Congregation of Cardinals, concerning the affairs of the Regular [Canons], has noted that..." Here, the author, in this case which he resolves with the authority of the Sacred Congregation, does not include the words "approved by the local Bishop," as he did in the previous case. It is not without reason that he omits these words, which he certainly would have included if the meaning of the Resolution of the Sacred Congregation were understood by him.

[*Latin ed. p. 683*]

OF THE ORDER OF PREACHERS. 683 •» He considered it permissible to appoint a commissary. The General can suspend his subjects from hearing confessions for any reason, even for a hidden crime, and even extrajudicially (1).» Therefore, having thus explained what is required by office, he implored [his audience], although the author seems to hold a different opinion on this matter, namely, that Superiors of Religious Orders can suspend their subjects who have been approved by the Bishop to hear the confessions of the laity; nevertheless, the cited Resolution of the Holy Congregation does not seem to apply to those who have been approved by the Bishop to hear said confessions, since it only mentions the approval granted by the General of the Order of the Theatines, which could be given to hear the confessions of Religious. Furthermore, in the aforementioned Resolution, if it is to be understood as referring to the confessions of the laity, it does not state that a Religious suspended by his Superior is invalidly absolving: but only that one approved by the General can be suspended by his predecessors. Moreover, many things are prohibited which, if done, would retain their validity, as the well-known axiom of Innocent III states. He did not fail to indicate another argument drawn from a privilege directly granted to the Order of Preachers by Julius III on January 17, 1515, of which the same author, Peregrinus, makes mention, by which the praised Pontiff annulled all licenses obtained, and to be obtained in the future, to hear sacramental confessions, without the consent of their Superiors. However, it was observed that «if from this privilege the power to suspend those approved by the Bishop to hear confessions were taken away; since, according to the alleged Decree of the Council of Trent, any privilege abrogated ceases to be valid, it would seem that said privilege had ceased.» With these and other learned arguments presented, the proposed

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doubts are to be resolved. I. «Whether a Religious not approved according to the laws of his own Order by his Superior, or even against his will, with only the authority of the Ordinary, validly hears the confessions of the laity?» (1) It should be noted that, perhaps, even Lucio Ferraris and other authors may have referred to such a Resolution. The words of the Bishop are: These words, which are inserted by error, are not found in the authentic document, nor are they mentioned by Peregrinus; and they add "by his predecessors" and "by any other superiors," which are not found in the original text.

[*Latin ed. p. 684*]

684 OF THE ORDER OF PREACHERS. QUESTION. "Whether Superiors Regular, having jurisdiction, can suspend their subjects from hearing the confessions of the laity, even with informed conscience." And to this, an affirmative answer. III. "Whether such a suspension, whether oral or written, is valid." IV. "Whether an absolution imparted by one who is subject to such a suspension is valid." And to this, a negative answer. V. "Whether one who attempts to give such an absolution incurs irregularity." ANSWER. — The Sacred Congregation of Bishops and Regulars, after deliberation on March 2, 1866, judged it fitting to respond as follows: To I. Affirmative. To II. Affirmative; however, so that the Religious who is illegally suspended does not, in truth, invalidate the confessions. To III. Affirmative, provided it is communicated in the manner of a particular precept. To IV. Affirmative. To V. Provided for in the foregoing. FROM THIS, WE GATHER: I. After the Tridentine law, chapter 15, session 23, no Religious is to be considered suitable to hear the confessions of the laity, unless he receives the approval of the local Bishop for this purpose. II. That through this approval, the necessary jurisdiction is conferred to validly hear confessions. III. Therefore, such jurisdiction cannot be taken away from Superiors Regular from their subjects, although they may justly forbid and prohibit them from hearing said sacramental confessions. IV. Hence, if a Religious, disobedient and disregarding the prohibition of his Superiors, were to hear said confessions, he would validly absolve penitents, although illicitly. V. Nor would he incur irregularity, since such disobedience does not disregard any canonical censure.

[*Latin ed. p. 685*]

685, CONGREGATIONE INDULGENTIÆ. Porziuncula. Die 29 Augusti 1864. "Quamquam comprobatur, et ab hac Sacra Congregatione declaratum est, omnes ecclesias quae olim sub imperio erant Fratrum Ordinis Seraphici, Indulgentias eiusdem Ordinis proprias amisisse; attamen, ad ex implendas preces R. P. Hadriani Iosephi Humbert ex Ordine Conventualium, Sanctissimus Pius PP. VII. per Breve sub die 20 Iunii 1817 (1) confirmavit, et, quatenus opus esset, de novo

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concessit Indulgentias omnes, et singulas peccatorum remissiones. Pius PAPA VII. Ad perpetuam rei memoriam. Dilectus Filius Presbyter Iosephus Hadrianus Humbert, fratrum Ordinis Minorum S. Francisci Conventualium nuncupatus, professus, nuper fecit nobis patere, quod dum nonnullae ecclesiae in Galliarum Regnis existentes a Fratribus dicti Ordinis regebantur, Indulgentiis, quibus ecclesiae, et Monialium Ordinis praedicti die secunda mensis Augusti fruuntur, et gaudent, frugebantur et gaudeant. Cum autem, sicut eadem expositio subiungebat, non amplius praedictae ecclesiae a Fratribus memorati Ordinis gubernentur, plurimum veretur Indulgentias huius modi subsistere. Nobis propterea humiliter supplicavit, ut in praemissis opportune providere, ac ut infra de benignitate Apostolica indulgere d ignaremur. Nos, ne quid ad animarum proficuum, ac Religionis pietatisque augmentum deficiat, huiusmodi supplicationibus inclinati, de Omnipotentis Dei Misericordia, ac SS. Petri et Pauli Apostolorum eius auctoritate confisi, Indulgentias, communes et singulas peccatorum remissiones, ac poenitentiarum relaxationes, vulgo de Portiuncula nuncupatas, quibus praedictae ecclesiae antehac, dum a Fratribus eiusdem Ordinis regebantur, die secunda mensis Augusti locupletatae erant, Autoritate Apostolica tenore praesentium confirmamus, et quatenus opus sit, dummodo Christifideles injuncta pro hilarum consecutione rite adimpleant, ab auctoritate, et tenore paribus de novo concedimus, et impertimur. Non obstantibus, quatenus opus sit, Nostra et Cancellariae Apostolicae regula de non concedendis Indulgentiis ad instar, aliisque Constitutionibus et Ordinationibus Apostolicis, caeterisque contrariis quibuscumque: Praesentibus, perpetuis temporibus valituris. Volumus autem ut praesentium Litterarum transcriptis, seu exemplis etiam impressis, manu alicuius Notarii publici subscriptis, et sigillo personae in ecclesiastica dignitate constit utae munitis, eadem prorsus fides adhibeatur, quae adhiberetur ipsis praesentibus, si forent exhibitae vel ostensae. Datum ex Arce Gandulfi die XX. Iunii MDCCCLXVI, Pontificatus Nostri Anno XVIII."

[*Latin ed. p. 686*]

686. Concerning the Indulgences, commonly known as those of Portiuncula, which are granted in churches existing in the Kingdom of France, and which were formerly governed by the Brothers of that Order; indeed, for the greater benefit of the faithful, the same Pontiff, through another Brief dated May 4, 1819, (1) transferred the aforementioned Indulgence of Portiuncula in those same churches to the Sunday immediately following the second day of August, unless that day falls on a Sunday. Now, since today some churches in France are again under the administration of the Brothers of the Order of St. Francis of Assisi, and therefore enjoy this Indulgence on the second day of August, the following is established: the Parish Priest of St. Francis in the Friuli region shall inform the Episcopal Curia, and this

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Holy Congregation, of this matter.

(t) Pope Pius VII. For the Perpetual Remembrance of This Matter.

Furthermore, We, through Apostolic Briefs of a similar form, issued on June X, 1817, granted to all and each faithful of both sexes who are truly penitent and have confessed, and who have received Holy Communion, that if they visit any of the churches which formerly belonged to the Regular Order of St. Francis of Assisi in the Kingdom of France, on the second day of August, they may obtain all and each of the indulgences and remissions of sins, and the relaxations of penances, commonly known as those of Portiuncula, as is more fully contained in Our aforementioned documents, the tenor of which We wish to be considered expressly stated and included herein, granted by Us in the Lord. It has recently been brought to Our attention that the faithful, when this day falls on a holiday, do not obtain the aforementioned indulgences as easily, and that therefore, they would be more beneficial for the spiritual welfare of souls if they were, by Us, transferred. Therefore, We, intent on increasing the piety of the faithful and the salvation of souls, with the merciful grace of Almighty God, and with the authority of St. Peter and St. Paul, the Apostles, We decree the aforementioned indulgences, remissions of sins, and relaxations of penances, as preferred, to the Sunday immediately following, unless the second day of August falls on a Sunday; however, all other provisions of Our aforementioned documents shall remain in force.

Notwithstanding all and each of those things which We wished to be observed in Our aforementioned documents, and all other contrary things, these present documents are valid for the present, perpetual, and future times. We wish that to these present documents, or even to printed copies thereof, with the hand of a public notary, signed, and sealed with the seal of a person holding an ecclesiastical office, the same faith be given as would be given to these present documents if they were exhibited or shown.

Given at St. Mary Major on the IV day of May, 1819, in the XX year of Our Pontificate.

[*Latin ed. p. 687*]

FOROIULIEN. 687 i. "Whether the Briefs *Exponi nobis* of 20 June 1817, and *Alias nos* of 4 May 1919, are authentic, and if so, whether they are still in force for France, although in some places there are now Conventual Franciscan churches in which the Faithful can obtain the Indulgences of Portiuncula on August 2nd (1)."

II. "Whether the old Franciscan church, now a parish church, which is subject to the Brief *Alias nos* concerning the granting of Indulgences of Portiuncula on the Sunday, requires a special Indult, so that the Faithful may obtain the Indulgences on August 2nd in that church."

"Therefore, the Holy Congregation, after having heard the opinions of

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the Consultors in the general meetings held in the Vatican buildings on August 29, 1864, and after mature deliberation, decided to respond as follows: To I. Affirmative. To II. It requires [a special Indult]."

"Given in Rome, from the Secretariat of the same Holy Congregation, on August 29, 1864."

FROM THE ABOVE, WE GATHER: "To those who duly visit the churches of Regulars, Indulgences are granted with a view to the Regular family by which the church is governed; if the Regular family ceases, the same Indulgences likewise cease (2)."

(i) "Perhaps the reason for the doubt raised by the Inquirer was the Resolution of the Holy Congregation in Piacenza on May 29, 1841, for in that instance, the following doubt was proposed: 'Brothers of the Order of Friars Minor Reform, in the City of Placentia, ask the Holy Congregation: Whether in the churches of the Seraphic Order, which were taken from the subjection of the aforementioned Order during the time of the Gallican suppression, and which are now held under the care of secular priests, the Regulars have in any way relinquished their rights, so that the Indulgences, commonly called of Portiuncula, and others granted by virtue of the aforementioned Order, may still be obtained by the Faithful, especially since the Most Holy Pope Pius VII. has declared something on this matter.' The Holy Congregation, after hearing the opinions of the Consultors, responded: 'It is not known that the Most Holy Pope Pius VII. has declared anything on this matter, and therefore, negatively.'"

"For those places where an affirmative opinion is held, in order that no scandal arise among the Faithful, recourse must be had to the Holy Apostolic See concerning the granting of the Indulgences, commonly called of Portiuncula, but with the cause explained as cited in the doubt mentioned above. However, in the present Resolution concerning Placentia, the matter did not pertain to the kingdoms of France."

(2) "See also what we said on page 239, §. From which, we gather."

[*Latin ed. p. 688*]

Valley of Guy. August 29, 1864. "Since it has been declared on several occasions by the Holy See that the Sisters of monasteries in France can enjoy all those indulgences which have been granted to Religious, or to those of the Institute of Nuns who pronounce solemn vows according to their respective Rule; hence, a doubt has arisen concerning the Carmelite family: namely, whether to the Sisters of this Institute in France, the Apostolic Benediction, which is to be imparted four times a year with a plenary indulgence, granted by Benedict XIV to the Order of the Brothers of the Blessed Virgin Mary of Mount Carmel, can be lawfully and validly imparted by their Confessor or Chaplain at the present time. And, in order to obtain this, the Carmelite Sisters of the Valley of Guy offer their supplications

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for the grace that their Confessor or Chaplain at the present time may impart the Apostolic Benediction with a plenary indulgence." "The Sacred Congregation for Indulgences and Sacred Relics, having considered the matter in general assemblies held in the Vatican buildings on August 29, 1864, after hearing the opinions of the Consultors, responded: to the first part, negatively; to the second, it is not expedient."

Opinion of the Consultor. The Consultor, who submitted his opinion in writing, briefly noted that the faculty of imparting to the faithful the Pontifical Benediction four times a year, granted by the ancient Carmelites by the Holy See, had been revoked by Benedict XIII, by virtue of a rescript of the Sacred Congregation of March 26, 1729; and that it had subsequently been granted again by a Brief from Benedict XIV on August 18, 1743. However, the Consultor stated that such a faculty belonged only to the Brothers, so that it could not be extended to the religious of the Carmelite Institute. For it can only be granted by the Prior of the convent, and in the church of the same, or by a Brother delegated by the Prior; a condition which, it seemed to the Consultor, was clearly intended by the Supreme Pontiff to restrict the praised privilege to the Brothers alone. This is clearly stated in the publications by the Carmelites in Belgium and in Italy, in which the indulgences and privileges granted to the Order are enumerated and declared. And never have the Carmelite Nuns of the Order, even though they pronounce solemn vows, permitted the use of the aforementioned faculty in their churches. Therefore, etc."

[*Latin ed. p. 689*]

689 FROM THE AUDIENCE OF THE MOST HOLY [POPE], TO THE PIOUS SOCIETY OF THOSE WHO SERVE THE CHURCHES. Father Vincent Basile, of the Society of Jesus, Apostolic Missionary to Southern Slavs, humbly beseeched [the Pope], that he might deign to approve and enrich with some spiritual treasure their Pious Society, of all those who dedicate themselves to the service of churches (1), instituted under the protection of the Blessed John Berchmans, Confessor of the Society of Jesus, and directed with such purpose, that they may perform this most excellent office with the devotion and piety it deserves. For this same society, the Missionary requested the following from the Holy Father: I. "A plenary indulgence, which may be applied to the souls of the departed, on the day of their admission into the society, and on the anniversary of the Feast of Blessed John Berchmans (2)." II. "A plenary indulgence, which may also be applied to the departed, on those five Sundays which precede the Feast of Blessed John Berchmans, in memory of the five years in which they lived in the religious order." III. "An indulgence of one hundred days, which may also be applied to the departed, whenever the members devoutly serve the sacred rites, or with equal reverence kneel, or perform their duties in the temple." IV. "An indulgence of seven years, which, as above, may be applied to the

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departed, to those members who have recited the five prayers (3) written to implore the intercession of Blessed John."

(1) Not only can those who are officially dedicated to serving the churches be admitted into this pious society, such as sacristans and clerical ministers; but also laymen and clerics, who spontaneously offer the same service in the service of the churches. For the sake of clarity, see Appendix XXIV, Act, volume I, section XI. (2) See page 492 in the note. (3) We provide a more extensive version of these prayers in Appendix XXIV, of which an italicized example has been approved by the Most Illustrious and Reverend Assessor of the Holy Roman Church, Laurentio Salvati, according to the written instruction. See what we said in note 44, page 321.

[*Latin ed. p. 690*]

690 A PIOUS SOCIETY FOR SERVING THE CHURCHES. V. "That this pious society, with the consent of the Ordinary, may be established wherever it can be, and by any secular or regular priest." From an audience granted by His Holiness on September 21, 1865. His Most Holy Lord, Pope Pius IX, by Divine Providence, having referred to me the aforementioned matter, the Most Reverend Cardinal Prefect of the Sacred Congregation for the Propagation of the Faith, benignly approved the pious society, concerning which the prayers were made; however, it must be established with the consent of the Ordinaries; and regarding the first and second requests, He granted the grace requested, with the legally required conditions observed; regarding the third and fifth requests, He likewise granted the grace requested; and regarding the fourth, He granted it according to the request, provided that it has been proven by authentic authority: this [decree] is valid for the future, perpetually, without this brief being necessary, but it must be presented in the records of the Sacred Congregation for Indulgences. Given in Rome, from the offices of the Sacred Congregation for the Propagation of the Faith, in the year as above. A. L. Cardinal BARNABÒ, Prefect.

The present Rescript was exhibited in the Secretariat of the Sacred Congregation for Indulgences on September 30, 1865, in accordance with the decree of the same Sacred Congregation of April 14, 1856. In witness whereof, etc. Given in Rome, from the same Secretariat, in the year as above. PHILIPPUS Can. GOSSA, Substitute.

[*Latin ed. p. 691*]

APPENDIX XXII CONCERNING DEPUTIES OF SEMINARIES. To demonstrate in the matter presented, the Deputies of the Seminary, two from the Canons, one chosen by the Bishop, the other by the Chapter, page 657; and two from the Clergy, one also chosen by the Bishop, the other by the Chapter, concerning how steadfastly the Holy Congregation insisted, for the observance by the Clergy of the Decree of the Council of

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Trent, session 2, chapter 18 concerning Seminary Deputies, truly, §. And because, at the end of said chapter, speaking of the rendering of accounts, mention is again made of the ancient ones, which the Authors do not fail to refer to, and of the more recent ones. These Seminary Deputies, to whom the Bishop receives annually, present themselves with the two from the Chapter; and the same number of accounts are spontaneously offered by the Clergy. A first question, which spontaneously presents itself concerning the various kinds of Deputies; it is doubted whether a third kind of Deputies is established, with a distinct office, distinct from those already constituted. The Council of Trent, in the aforementioned place, prescribes a second kind. Although, from the context of said chapter, and also from analogous declarations of the Holy Congregation, it can easily be gathered that here, no third kind of Deputies is prescribed; nevertheless, we have a recent Resolution, issued on the 31st of March, 1855, which removes any doubt concerning the kind of Deputies prescribed, whose counsel the Bishop should use in all matters. In this case, all things were debated, as to whether to establish a third kind of Deputies, to be distinguished from the others, concerning the taking away of portions from all benefits for the support of the Seminary, and the uniting of benefits. These four Deputies, the Canons allege, are to be distinguished from the third kind of Deputies, according to the words of Trent.

[*Latin ed. p. 692*]

692 APPENDIX: concerning those who are to be received, especially those who are addicted [to certain things], the rendering of accounts should be independently chosen by the Ordinary, either by four individuals, or by the Chapter, or by the Clergy: two from the Chapter, the Archbishop [in the case of a diocese] contends against the Bishop, and the Deputies, of whom mention is made here as being the Clergy, are entirely the same; of these, one is to be received, one of whom is chosen by the Chapter; two are chosen by the Bishop, and the other two by the Clergy. These matters are discussed in the aforementioned paragraphs.

Secondly, it may be asked, who should be consulted in individual matters concerning the advice of the Deputies, whether to the Bishop, to the Chapter, or to the Clergy of the city, respectively, in each case.

On this matter, several Canon Law opinions are asserted and defended, and one among the Canons, Monacellius, is cited, namely in the Salernitan book 6, decree, which, among other things, states: II. "Concerning the Deputies who are to be used in rendering accounts in the establishment of universal rules for the Seminary, it is asserted that, for the sake of the children being introduced, the election of these Deputies, whether of the aforementioned four, or of new Deputies of this kind, is observed in the election of masters, of books to be read, of a Confessor, of punishments, of expulsion, of visitation, and of similar matters." UT. "Whether others are

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to be appointed, and whether the appointed Deputies are to be included only in the rendering of accounts, which is contained in the same nature as the four, so that only the Deputies are to be considered in matters connected with the administration, and whether those who are to be chosen according to what is prescribed, and whether, because of the doctrine, the Resolutions of the S. C. C. are cited, which mention only four Deputies in the matter under consideration, namely, of the appointment, or expulsion of ministers, and of the daily expenses, of provisions, and of other revenues of the Seminary, even from benefices."

Therefore, the question is posed: "Whether, in the case of the Seminary, the Deputies who are to be chosen for the rendering of accounts of the revenues of the Seminary, are to be chosen in such a way that..." The Congregation responded: "Affirmatively, and even..."

[*Latin ed. p. 693*]

xxiv. * Concerning united benefices, such as, for example, locations, concessions, and other contracts, litigations, which might impede or disturb the instruction, or preservation, of the Seminary.

To these two doubtful statements, the Holy Congregation responded as follows: To the Most Reverend Bishop of [city name], greetings and blessings. Regarding the Seminary, the following are to be observed:

I. In all matters concerning the temporal administration of the Seminary.

II. In the expulsion and appointment of ministers of the Seminary.

III. In the daily expenses pertaining to the institution.

IV. In the provision of food.

V. In the administration of goods and revenues of the Seminary.

Consult. 81. However, the Bishop is not bound to follow their advice in all things, but is obligated to follow the advice given in the aforementioned resolution, which is clarified with these words: Here, the author, referring to a resolution, states: "In Milan, as mentioned above, the Bishop, by the law of Trent, is obligated to consult with the Canons elected by the Bishop for the establishment of the education of children, whom we have called of the second species; these must not be changed, except as mentioned above, when it concerns the temporal administration of the Seminary, but they are not obligated to follow their advice, and the following matters must be brought before them:

I. In establishing regulations.

II. In the election of individual pupils.

III. In the computation of expenses.

IV. In the punishment of misconduct.

V. In the introduction of new practices.

VI. In the visitation of the Seminary.

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VII. In the selection of books to be read.

VIII. In the selection of the location.

IX. In the selection of a confessor.

X. In the expulsion of those mentioned above.

XI. And four others to be consulted in matters of taxation and contributions pertaining to the Seminary.

* Concerning the union of benefices, the Congregation, in session 23, of the year 1595, page 97, decreed: "Only four deputies are to be consulted in the administration of the Seminary, except in those matters to which the entire Holy Congregation is to be consulted, because the Bishop is obligated to consult with them, to which is due due consideration."

In the Decret, lib. 8, Congregatio, in the matter of the aforementioned, it was declared in four decrees, Curien, year 65, page 1594, that all matters pertaining to the temporal administration of the Seminary are to be considered, except those in which only the Bishop is concerned.

In the election of teachers.

In all of these matters, the Bishop is to consult with the aforementioned.

[*Latin ed. p. 694*]

694 APPEN In the Seminary of Trìcaricen, on March 24, 1736, the Bishop discovered the "Deputatos de X XXIV." ("Deputies of the Twenty-Four"). The response was: "They are to be held accountable negatively." They were to be held accountable, but not to use their counsel. Such a declaration is not rightly made, so that the Holy Congregation has determined that the debtors of the Seminary in Oseen, page 84, have been in error, in which it is written: "The Bishop forbade them from further administration of the Seminary; Decrees and proposed doubts to be resolved by the Holy See: Bishop I. 'Whether the administration of the Seminary, by the deputies, should provide both for morals and for temporal matters.' II. 'Whether it is necessary to provide for a sufficient rendering of accounts for the administration exercised by the deputies of the Seminary.' The Holy See responded: 'It is more fitting to request the opinion of the Bishop, with counsel, than to rely on the deputies, except in those matters which pertain to the Bishop alone. The Bishop may, with prudence, determine what is expedient for the deputies.' Although the administration of the Seminary ought to be exercised by the Bishop, or rather by his deputies, the Bishop is not bound to follow their counsel: for the deputies have only an advisory vote, not a decisive one; however, if, without counsel, decisions are made, they are invalid, as reported by Pignatelli, according to the Council of Trent, which was resolved by the Holy See on January 13, 1594, but not to follow the counsel of that Council. In the Official Records of the Seminary of Fundi, on March 26, 1689, volume 9, consultation: "The authors are: Pitonius, volume 4, page 129, and doubts: I. 'Whether the Bishop can and may appoint a

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Rector, and other officials of the Seminary, without counsel.' II. 'Whether the Bishop, in the revision and consolidation of the accounts of the said Rector, ought to follow the counsel of the officials; without which, the union is invalid; and this applies to unions of external benefices.'" Furthermore, many resolutions exist in which it is declared that the Bishop is to seek counsel from the deputies, but he is not bound to follow their counsel. Pope Benedict XV, in his work on Diocesan Synods, teaches that the counsel of the deputies is to be considered in matters concerning the Seminary.

[*Latin ed. p. 695*]

APPENDIX xxiv. 695. Regarding matters subject to the authority of the Holy Congregation: it is written in the aforementioned passage, chapter 7, section 2, that the Holy and Holy Congregation responds as follows: "Such deputies are not necessary to be perpetual, nor can they be removed at will; indeed, it seems more fitting that, if they are to be appointed, this should be done outside of the Synod, with the counsel of four deputies."

Page 7, July 14. "For a just cause."

Beneficiary 29, no. 60, L. I, question and answer, and as interpreted in "Sacra," etc. "The seminarian is not valid unless elected by the Bishop, according to session 18, verse 23, and can only be removed for a just cause." Also, "All these things, which are done with the counsel of their superiors, are just and valid, and the Council, in its deliberations, considered that the legitimate administration of the seminaries should be preserved."

Salernitana responded and, in answer to the fourth doubt, which had already been conceived in the aforementioned words: "Can two canons elected by the Archbishop to establish the education of the seminarians, be changed or altered at the Archbishop's discretion?"

IV. "Can these four deputies, entrusted with the administration of the seminaries, be removed at will, or must they observe the form prescribed by the Sacred Council, session 18, chapter 23, and the decree of March 14 of the same year, Lib. 18, in which it is upon the unions are to be observed 'according to the form of the statutes'?"

The Sacred Congregation replied: "It is required that the deputies appointed for the seminaries, according to the aforementioned decree of the same Council, be perpetual, or at least not removable at will, provided that the reasons for their removal are just."

Furthermore, it can be asked whether such deputies, once elected, can be removed, even if they are considered to be of good standing.

(1) Barbosa, in *De Officio et Potestate Episcopi*, part 3, allegation 93, no. 22, wrote: "The accounts of the revenues of the seminary should be heard in the Synod by four deputies, two of whom are from the Chapter, one elected by the Chapter, the other by the Bishop, and two others from the clergy, one elected by the clergy, and the other by the Bishop." However,

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it does not appear that this author derives any such obligation from this. The Council of Trent, in the aforementioned passage, does not order the Bishops to receive the accounts of the revenues in the diocesan synod, but only prescribes: "The Bishop shall receive the accounts of the revenues of this seminary annually, in the presence of two deputies from the Chapter, and two others from the clergy of the city." Therefore, it only requires the presence of these deputies. Indeed, as noted by Benedict XIV, it is not necessary that the unions of benefices for the establishment of seminaries be made in the Synod.

[*Latin ed. p. 696*]

696 APPENDIX xxiv. » concerning those chosen, and it was stated to the Holy Congregation: "Concerning the election of the Chapter." The Holy Congregation responded: "I. It is not necessary to provide for the possibility of removing a member from the administration of a Seminary. In the cited document of Trent, dated March 24, 1736, a certain Canon, Filucci, one of the deputies to whom the Bishop had entrusted the administration of the Seminary, having been absent for several days and lacking the necessary qualifications, and also being deficient in seniority, as required by the statutes of the Council of Trent, the Bishop sought to remove him from the deputation. In the case of Kosso, the following response was given: "II. It is not the case that a Canon Filucci, a deputy of the Seminary, can be removed from his office." The Holy See affirmed this. The Archbishop, in this case, considered the reason for removing him from his office to be a legitimate cause. It was further stated that a case could arise in which the election of Canons is required, but no Canons are present who can be elected, or, if elected, are prevented from performing their duties for some time; therefore, in this case, whether others should be substituted. In this matter, two resolutions are cited, which clarify the question. In Pinhel, on January 15, 1791, when a diocese was to be established from two dioceses, and no Chapter had been established, nevertheless, the statutes of the Council of Trent regarding the proper governance of Seminaries were observed as much as possible, and it was declared that the same form should be maintained, even in the case in which deputies of the clergy alone were to be appointed, or in which Canons could not be added. II. "Is there a place for substitution in the case of an absent or impeded deputy?" The Holy See firmly adheres to the statutes of the Council of Trent regarding the proper governance of Seminaries, and therefore, in this case, it is affirmed that a substitute should be appointed.

[*Latin ed. p. 697*]

From what has been said, it is clear how far the assembly established by the Council of Trent deviated from the path it should have followed. The Council, in its munificence, decreed that perpetual deputies should

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be appointed, so that there would never be a lack of full knowledge of discipline and of matters pertaining to the seminary, before the Bishop, in the cause previously explained; and if this knowledge were lacking, the assembly would suffer detriment; and those appointed were the Dean, the Sacristan, two Chaplains who would always be present, the Rector for the time being of the seminary, five Lecturers who would meet once a week, and the seminary itself, with its experience, would better fulfill its office and perform its functions, without distinction of offices, without perpetuity of persons, without any consideration of suitability. However, the Tridentine Council did not grant these deputies any jurisdiction, but rather entrusted them to the Sacred Council, almost independently of the Bishop, to treat of matters both spiritual and economic pertaining to the seminary itself, using their counsel, their vigilance, and their prudence, so that things might be directed and arranged in the best possible way.

Indeed, although the Council of Trent established several deputies for the sake of the things that ought to be done, it nevertheless wanted there to be one person who would oversee the seminary, namely the Bishop. For the deputies, as they assist the Bishop in council, are not the ones who have the ultimate authority. Moreover, the Sacred Council decreed that the governance and administration of seminaries should belong to the Bishops, who should be assisted in these duties by a council of deputies, and that the deputies should be free to do what they consider best, after hearing the council, for the good of the entire diocese; therefore, it is fitting that those who are most suitable, both from the clergy and from the chapter, should be called to the council.

Furthermore, from the correct institution and governance of seminaries, the Sacred Synodus also established that, in addition to the deputies, Clerics and Canons should be chosen to be part of the council, so that the good of any diocese might depend on the seminaries, and thus the greatest possible benefit might be obtained for them; and from this it is also clear that, with regard to the Council of Trent, no other matter is granted to the Bishops with such broad powers regarding the disposition of ecclesiastical goods, namely in the taxes.

[*Latin ed. p. 698*]

xxiv. APPENDIX concerning what must be added, in uniting benefices, so that the aforementioned support for the said foundation would seem sufficient, especially when the matter concerns Seminaries (1).

A cause is currently being considered in the Sacred Congregation, in Terlizzi, regarding this very matter.

The pension of November 26, 1764, which favored Seminaries and of which we are speaking, also provides for this. The Bishop of Terlizzi petitioned, and obtained from the Apostolic See the following effect: "That, should the revenues from the Chapter's endowments, intended for the

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Seminary, increase, so that they rise from 1000 Ducats to 1500 Ducats; or, should the revenues from the benefices, from which the entire office is drawn, increase, so that, after deducting the dowry, the entire amount, whether it be a single benefice or several, is found to be incorporated into the Seminary, then the said Bishop shall note this, and the portion thus increased shall be remitted."

Nevertheless, they supplicated that the aforementioned be restored to their original state, especially since, due to increased taxes, they could no longer contribute to the aforementioned prayers in the case: "To this, the following response was given: negatively in all cases."

(1) Concerning the power of Bishops to do this, one may read what Piguetius wrote in volume 9, Consultation 81, and Benedict XIV in his work on diocesan synods, book 1, chapter 7.

[*Latin ed. p. 699*]

699 APPENDIX XXIV: A PIOUS SOCIETY FOR THOSE WHO DEVOTE THEMSELVES TO SERVING IN TEMPLES, WHICH HAS BEEN ESTABLISHED UNDER THE AUSPICES OF BLESSED JOHN BERCHMANS, AND WHICH THE MOST HOLY FATHER HAS GRANTED INDULGENCES. This society is aptly named, for BLESSED JOHN BERCHMANS himself, without considering the late hour or the long journey, would, as is clearly evident from the accounts of his slender and youthful frame, which followed him, excerpts from his life, desire to attend the morning Mass, which, as CEPARIUS describes, was celebrated in that solemn temple. "From his very youth, he always attended the sermons with the most willing heart, and he remained kneeling throughout the time that these services were performed, and he wore a tonsure, which he never removed, nor did he ever allow anyone to remove it, so that he might better perform the duties of piety and sacrifice (1). " He stood before the altar, with his head covered, a sight that moved all who beheld him: and there was a certain man, under whose authority he served, who was always present at meals and by the hearth, so that he was never absent on Sundays; and when asked why he did this, he replied that it had come to pass that, in the winter, he would bend his knees at the corner of the temple, and cover his head, and he could scarcely obtain permission to do so, although his companions were always allowed to use their pillows; and he would remain kneeling until the evening prayers were completed. Thus, a certain man from GENOA (who had piously observed this custom on Saturdays and vigils in honor of the Virgin) was delighted to protect him. One day, before the feast of a certain Father, he fasted. "Tell me," said the Father, "why you are fasting." "I am fasting," he replied, "because I wish to perform the evening prayers of the psalter." Then he said, "I, for my part, prefer your goddess." And so it was that he went to ROME, to hear the readings, and to be present at meals and by the hearth, and therefore

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he was asked to bend his knees in the temple, he could scarcely obtain permission to do so, although his companions were always allowed to

[*Latin ed. p. 700*]

APPENDIX XXV.

700. With a singular devotion, he would return to this place on festive days, and with reverence and piety, this young man would, with bent knees, spend much time in prayer before the Most Holy Sacrament, praying through the windows, never lifting his eyes for seven days, or sometimes even six; indeed, he seemed to remain there for at least five hours (there), so that he might be considered a man to be esteemed for his sanctity (there). I have seen many in the church who are diligently occupied with the Holy Eucharist; and when, through the opening of the doors, they hear others speaking in sorrowful tones about having missed a Sunday or some other obligatory feast day, this young man would say: "I have received Holy Communion this week," and, with a modest and unmoving posture, he would devote himself to prayer (there), which is why, in my opinion, he is a saint (there).

He was once asked to assist a priest who was ordered to walk about the church for exercise on both festive and ordinary days. He always performed this task with great diligence, often even solving problems or answering questions; and he would do so at that hour when the church was most crowded, and he would often pray before the altar of the Sacrament for so long that his companions would not even notice his absence. On another occasion, he was ordered by his superior to perform this duty for a certain Father, who, when he could find the young man, would ask him to return earlier, or later, as needed; and the Father would not notice or realize that this was happening; but when the young man, being called by his proper name, and addressed with a gentle voice, would return, he would say: "Serving at the altar brings me no discomfort." When he was sent to the house of a religious community, to serve St. Aloysius Gonzaga (who was then considered among the blessed), and whenever he entered the church to attend Mass, he would kneel for a while, praying, and then depart. If he had to wait, he would withdraw to a corner, where he would recite the Rosary of the Virgin, or read a book, always maintaining a most devout silence (there). After attending Mass, he would often go to the chapel of St. Aloysius; and he would speak of him with a certain tenderness of spirit, describing his life in a few words that he kept in a small book; and he took great care to imitate him, and to follow his life and virtues.

[*Latin ed. p. 701*]

APPENDIX xxv. 701 «tes referret. Therefore, many priests ought to carry, among the sacred objects displayed externally, also religious images and

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other sacred things; and while they are saying, "This is what we offer," they should present, if it is fitting, the image of St. Aloysius, so that those who see it may, by contemplating him, use his example in their life and religion. 3. While performing their duties in the temples on that day, let them always have St. Aloysius before their eyes, striving to follow the angelic path of that most holy youth, and dedicating themselves to the Divine Majesty before whom he served; and let them set before themselves this goal, so that, together with their brothers, in a double procession, they may cleanse the temple of all wickedness, and the Fathers, among whom John was one who carried the candelabra, and Father James, assessor of the liciae province, may present the youth, so that all may see and be inspired. 4. In the sacristy, let the young man, upon hearing or seeing anything that is dishonorable, be horrified: but if others should speak such things, let him, with a righteous spirit, correct them and remind them that such matters should be avoided. Superiors, as is fitting in this most holy place, should cherish any virtue. 5. The sacred objects should be removed from the altar at least fifteen days after, and on that day, let the feast of St. John be celebrated with the greatest reverence and modesty. Therefore, let them abstain from all frivolous conversations; let them not receive the Eucharist. Rather, let them devoutly kneel in prayer before the Eucharist is celebrated. It would be fitting to prepare for this feast with novenas. 6. On each of those days, let them perform all the actions, at the time that is most suitable, with religious devotion; let them avoid any distractions, so that they may not be prevented by the parish priest, or by anyone else, especially when they are serving at the altars, or when they are being instructed in the sacred rites, or when they are reciting prayers. (i) These rules, after obtaining the Apostolic rescript which we mentioned above on page 690, were composed in Italian by the same missionary and printed, along with the following, and communicated with the approval of the Vicar of the Urban Prefecture. Five prayers, according to the injunction expressed in the rescript, were approved by the Most Reverend and Right Reverend Lawrence Salvati, assessor of the Holy Roman See, and we translated them into the Latin language.

[*Latin ed. p. 702*]

702 APPENI i xxv. tem magni faciam , ex multum r e - 7. Quotidie haec recitetur verear. ORATIO: Pater, Ave, Gloria, IV. Devotissime B. Ioannes, ob B. Ioannes , qui puritate et modestia, qui reverentia in templis et eum amorem, quo S. Aloisium Gonzaga, ut fratrem amasti, SS.miam et B. Virginem et S. Aloisium adeo vero Virginem ut matrem, te pre- enituisti, obtine nobis gratiam tui cor , ut efficias me quoque habere in his virtutibus imitandi , ut qui Aloisium atque nos in templo conspiciant , te con- exemplaris loco , Virginem vero tam singularis patroni spicere arbitrentur, et Deo referant devoto et tibi méritos mihi clamandum semper sit: Ave Gloria. et honores...

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Pater, colere quam affectu, quiescam donec ut tecum obtinuero tenerum amorem erga matrem meam.

QUINQUE PRECES AD B. IOANNEM BERCHMANS, AD RECOLENDOS QUINQUE EOS ANNOS QUIBUS RELIGIOSAM VITAM PROFESSUS EST.

I. Innocentissime B. Ioannes, te Mariam. Pater, Ave, Gloria.

V. Ferventissime B. Ioannes, ob mirabilem pietatem tuam erga adorabile altaris mysterium et Christum crucifixum, te demum precor, ut gratiam mihi impetres ut magnum erga Iesum amorem ac te imitandi in hac praeclara virtute, reverentiam numquam permitiendo ut eam ego ut loco , praesertim vero in templis, mihi impetres, nullo amittam , extremumque mihi odium deficiam a reverentia in Sacramen- tum Amoris sui ; et semper et ubique glorier in Cruce illius, ut, post- quam Gloria.

II. Modestissime B. Ioannes, ob eum secutus sum in eam sensuum tuorum solertissimam aeternaliter custodiam , quae te adeo mirabilem Ave, frui in Pater, ORATIO ita Beatissime Ioannes, qui moriens sensus meos , ut numquam per eos voluisti Crucifixum et Rosarium et maledicti tuas Regulas in manibus tuis versari, meum obtineas cohibendi coelis. Gloria. mundo effecit, te precor , ut gra- tiam mihi terris fidelis discipulus, merear eo tecum venena peccati insinuentur. Pater, in cor Ave , Gloria. Haec tria carissima tibi semper fuisse , ea tibi esse in h o- III. Religiosissime B. Ioannes , ob diligentissimam dicens : stem validissima arma, e t , illa o b - eam curam in trectantem , te libenter mori ; a te Regulis Ordinis tui servandis, te preper Iesu Christi sanguinem peto , cor , ut gratiam mihi impetres, qua ut impetres mihi tantam reveren- sancta Dei mandata perfecte exse- tiam erga sancta Evangelii mandata^ quar , evangelica vero consilia sal- tantam in SSmam Virginem pietatem,.

[*Latin ed. p. 703*]

xxv. 703 And may that love for Jesus, which is the end of this association, be inscribed with the name and cognizance – of my crucifix; so that these three affections, mine, and yours, and that of the year, may be united to me, so that, with the seal of the temple, I may overcome the assault of the devil: thus, 4. If those who are enrolled, are such that, as in that last hour, they are those who minister in their temple, and, through their union and trust, may perceive the care with which all things are full of piety, I may be able to repeat your example, and that the members of the association may observe the rules: thus, may these three things always be present in my most beloved life, so that they may be things to be remembered (which have been necessary to me); and may I die, month by month, with them in my heart. Amen. (He rejects exhortations.) 5. If, however, they minister elsewhere, or if, B. Ioannes. B). That we may be made worthy of the promises of Christ, LET US PRAY. O God, who established the sanctity of your Confessor, B. Ioannes, in the perfection of regular discipline and the

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custody of the temple, grant that those who minister in their temple, and those who faithfully observe your commandments, and all other members, may be granted purity of mind and body through Christ our Lord. Amen.

MONITIONS FOR ESTABLISHING THIS PIOUS ASSOCIATION IN PARISHES.

1. The director or parish priest shall take care of our rules, and shall recite that prayer: "B. Ioannes, with the Pater, Ave, etc." with the Gloria, and shall have a brief sermon, or otherwise explain something from the rules, or give some instruction, or treat of something concerning Christian morals, or concerning ceremonies, which are to be observed in the ecclesiastical year, especially if it is during Mass: in which he shall have those present, and shall exercise them in the presence of all. After the spiritual reading has been completed, he shall recite the prayers and indulgences of the pious association, and the Litany of all the saints, so that the time shall not exceed one hour.

2. The director shall have a catalog in which the name, surname, age, and domicile of each member are designated, and in which he shall frequently have them prostrate before the image of B. Ioannes Berchmans, and shall add a list of indulgences, which have been granted by Pope Pius IX, and the name, surname, and domicile of each member.

3. He shall also subscribe pages or registers of the association, with laurel leaves. All of these things...

7. But how can all those be present on that day, when this exercise...

[*Latin ed. p. 704*]

704. Concerning the *Appellationes* in the twenty-fifth [year], it is to be held seven days before the day of the Saints or three days before the feast of the same, publicly before the doors of the Church, and the day and hour of the meeting shall be announced, and the sacred synaxis shall be celebrated on the feast day. An invitation of this kind may be: "The pious sodality of the Conventus of Saint John Berchmans will be held on [day] at [hour] in the morning."

8. Let it be noted when the five days of devotion will begin, so that all, celebrating them, may daily obtain indulgences.

9. If anyone, considering those who minister in their temple, wishes to add something else that seems useful for the purpose of the pious sodality, nothing in these instructions prohibits it. Therefore, in this manner, all may arrange their affairs in due order, and proceed to the glory of God, our Lord, and to the honor of His servant, Saint John Berchmans.

[*Latin ed. p. 705*]

705 FROM THE ACTS OF THE CONSISTORY. THE CREATION OF

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CARDINALS OF THE HOLY ROMAN CHURCH, AND THE ELECTIONS OF BISHOPS. The Most Holy Pope Pius IX, after a brief address, held a secret Consistory on June 22nd in the Apostolic Palace at Vatican, and created the following Cardinals of the Holy Roman Church: IN THE ORDER OF PRIESTS: Paul Cullen, Archbishop of Dublin, born in that city on April 27th, in the year 1803. Gustav Adolph de Hohenlohe, Archbishop of Edessa in Pannonia, born in Schillingsfurst on February 26th, in the year 1823, and a secret benefactor of the Roman Pontiff. Aloysius Bilio, from the Regular Clergy of the Congregation of Saint Paul, Consultor to the Holy Roman and Universal Inquisition, and to the Congregation of Indices, born in Alexandria in Sabaudia on March 25th, in the year 1826. IN THE ORDER OF DEACONS: Anthony Matteucci, Pro-Camerlengo of the Holy Roman Church, born in Firmi on March 15th, in the year 1822. Dominic Consolini, Pro-President of the Council of State, born in Sinigaglia on June 7th, in the year 1826.

(1) Paul Cullen, Archbishop of Dublin, and Primate of Ireland, is the first who, by the splendor of the dignity of the Cardinalate, has deserved to illuminate that Catholic island, at least since the beginning of the Anglican schism. I say island, which, according to ancient accounts, is called the "Island of Saints and Doctors," and which, in the most severe persecution of the Catholic name under Cromwell and the Puritans, excelled so much in the firmness of faith, that, for distinct epochs, it deserves to be adorned with a threefold illustrious name: for it is the island of Saints, Doctors, and Martyrs.

[*Latin ed. p. 706*]

His Most Reverend Eminence, Cardinal, Created and Elected Bishop, then designated the following Churches: The Archiepiscopal Church of Melitene, in the Parts of the Infidels, to the Prelate Francis Xavier Mary Frederick de Merode, Priest of Brussels, of the Archdiocese of Mechlin. As Domestic Prelate, Supernumerary Apostolic Prothonotary, and Canon of the Patriarchal Basilica of the Vatican. The Cathedral Churches united of Viterbo and Tuscania, in the Pontifical Territories, to the Prelate Matthew Eustachius Gonnella, transferred from the Archiepiscopal Church of Neocaesarea, in the Parts of the Infidels. The Cathedral Church of Marseille, in France, to the Prelate Charles Philip Place, Priest of Paris. As Domestic Prelate of the Roman Pontiff, Auditor of the Sacred Roman Rota, and Doctor in both Laws. The Cathedral Church of Arras, in France, to the Reverend Father John Baptist Joseph Lequette, Diocesan Priest of Arras, Professor of Sacred Theology in the great Seminary of that City, and Vicar Capitular of that City and Diocese. The Cathedral Church of Venette, in France, to the Reverend Father John Mary Bécel, Diocesan Priest of Venette, and Canon, Archpriest, and Curate in the Cathedral Church of that City. The Cathedral Church of Cadurc, in France, to the Reverend Father Peter Alfred Grimar-

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dias, Diocesan Priest of Clermont. As Canon, Archpriest, and Curate in the Cathedral Church of that City, and as General Vicar of that City and Diocese. The Cathedral Church of Osnabrück, in Anno, to the Prelate John Henry Beckmann, Diocesan Priest of Osnabrück, supernumerary from the innermost chambers of the Roman Pontiff: as Dean of that Chapter; as General Vicar of that City and Diocese, and as Doctor of Sacred Theology. The Church of Riobamba, in the Republic of Ecuador, to the Cathedral recently erected by the Roman Pontiff, to the Prelate Ignatius Ordinez, Diocesan Priest of Conchen. As Supernumerary Apostolic Prothonotary, Archdeacon of that Cathedral, General Vicar of that City and Diocese, and Doctor in both Laws. After these things, the Most Holy Father noted the election of the following Churches, which were filled from the last Consistory to the present one.

[*Latin ed. p. 707*]

His Most Reverend Eminence, Cardinal Prefect and Bishop, 707, provided the following to the Sacred Congregation for the Propagation of the Faith: The Archiepiscopal Church of Marianum, in the parts of the infidels, designated for the Prelate Nicholas of Barcelona, of the Order of the Minor Capuchins of Saint Francis, Apostolic Delegate in Mesopotamia. The Episcopal Church of Rhodiopolitan, in the parts of the infidels, for the Prelate Robert William Willson, Bishop emeritus of Hobarton. The Cathedral Church of Dubuque, in the United States of America, for the Reverend Father John Kennessy, a Hibernian priest. The Cathedral Church of Petriculan, in the United States of America, for the Reverend Father Edward Fitzgerald, a Hibernian priest. The Cathedral Church of Erzerum, of the Armenians, of the Armenian rite, for the Reverend Father Stephen Milchisedechian. The Episcopal Church of Charlopolitan, in the parts of the infidels, for the Reverend Father Abraham Bsciai, Apostolic Vicar in Egypt for the Copts. The Episcopal Church of Myriophitan, in the parts of the infidels, for the Reverend Father Bernard Petitgean, Apostolic Vicar in Japan. The Episcopal Church of Magidan, in the parts of the infidels, for the Reverend Father Vincent Bracco, Auxiliary to the Most Reverend Joseph Valerga, Patriarch of Jerusalem. Finally, prayers were offered for the Holy Pallium for the Church of the Most Holy Trinity of Buenos Aires, which was recently raised to an Archdiocese by Our Most Holy Lord, granting, with favor and honor, the new Archbishop, Prelate Marian Escalada; also, for the Church of Marsili, which was granted, on April 1st, in the year 1755, the privilege by the Brief "Promani Pontificis."

[*Latin ed. p. 708*]

708 FROM THE PROCEEDINGS OF THE COLLEGE OF PROPAGANDA FIDE AND THE AMERICAN PROVINCE. September 1, 1864. We present the most important case, in which learned Consultors have debated exten-

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sively regarding the faculty of erecting monasteries, and concerning the enclosure of nuns in order to validly taking solemn vows, so that in this matter, it seems that almost nothing remains to be desired. Having briefly explained the facts, we will present, in a synopsis, the principal arguments of the dissenting Consultors (1). Summary of the facts. In the year 1800, before the Most Reverend Leonard Neale was elected to the Archbishopric of Baltimore, in the northern provinces of the United States, he had gathered certain pious women in Georgiopolis under the Rule of St. Francis of Sales, for the purpose of educating Catholic girls, and also to receive them into a boarding school. Because of the benefit that these pious women brought to Religion, the aforementioned esteemed man treated them as true Religious, so that among them a Superioress was chosen, a Novitiate was maintained, and the three vows, which initially obligated them, were observed for a period of one year, and thereafter were renewed annually with the permission of the Archbishop of Baltimore. When the aforementioned esteemed Prelate was promoted to the Archbishopric of Baltimore, and the number of pious women increased, in the year 1816, the Apostolic Consultors, in 63 folios, considered the matter. But the esteemed and Reverend L. Chaillot, who was the first Consultor to express differing opinions, wrote a vote full of learning, which, rather than a synopsis, deserves to be called a more extensive treatise, in which we will expose to the reader, in 160 folios, what was debated on both sides, and the reasons presented by each. For the sake of brevity, in the course of this Synoptic Discussion, we will call the first Consultor who wrote, the first, and the second Consultor, who wrote the second vote, the second. One of the Consultors selected was the Most Reverend and Reverend Joseph Cardoni, then Bishop of Carystus, now Bishop of Lauretanus.

[*Latin ed. p. 709*]

AMERICAN VOTES. 709 To these matters, I supplicated the Holy See with these words: "that His Holiness would graciously grant me the power to admit them to the solemn vows of Religion, and to make said community truly religious, strictly subject to all the rules prescribed by the Institute of the Visitation of the Most Blessed Virgin, and to enjoy all the privileges granted to said Order."

Pius VII, in a hearing on July 14, 1816, granted the supplication, "graciously granting them the power, with due observance, to admit, to the solemn profession of vows, in his diocese, certain virgins who spontaneously gather under the Institute of St. Francis de Sales, and extending to them all the indulgences and privileges enjoyed by the nuns of the Visitation of the Most Blessed Virgin."

In the year 1823, the Archbishop of Baltimore presented the following to the Apostolic See: In Georgiopolis, Catholic girls are compelled to attend Protestant women in order to learn the art of reading and writing, and are

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therefore in great danger of losing their faith; and he noted that if the nuns of the Visitation of the same city were granted the power to assign two of their converted sisters, commonly called "Sceurs-fourieres," to the education of poor girls outside the monastery walls, as was once done in Poland, (provided that they observed all other rules regarding poverty, modesty, and piety prescribed to them, or to be prescribed by their Superiors), this problem could be appropriately addressed.

After considering these requests, the Most Holy [Pope] granted permission that, as far as He judges to be expedient in the Lord, the Archbishop may grant the requested power to said nuns.

Subsequently, the same Archbishop made another request, asking that not only the two aforementioned "converted" sisters, but as many of them as He judges necessary for the purpose in the Lord, may be assigned; and to these requests, the Rescript of February 1, 1824, likewise granted permission by the Most Holy [Pope].

After obtaining several other Apostolic Indulgences, based on the circumstances of the place and civil laws, in the year 1840, the Archbishop of Baltimore presented the following to Gregory XVI: The aforementioned nuns have established other monasteries; and he requested, "that all and each privileges, rights, and indulgences, which the Supreme Pontiffs have hitherto granted to the nuns of the Visitation of Georgiopolis, may also be granted to them with benign generosity."

[*Latin ed. p. 710*]

710 AMERICAN VOWS. » These [rules] are to be extended to all monasteries, both those already established by the aforementioned nuns and those to be established in the future. Since several pious women have already entered three monasteries, namely Mobilense, Kaskakiense, and Baltimorensi, and have been received into the novitiate, and have made solemn vows, and because the aforementioned Pontifical decree appears to pertain only to the monastery of Georgiopolitanum; therefore, it is possible to doubt whether the professions made in these three monasteries are valid. Therefore, the Orator requested that the Supreme Pontiff, by virtue of his supreme authority, would revalidate and confirm the vows, provided that they renewed their consent, and that their profession would be considered valid by the vows they privately renewed. On November 22, 1840, a rescript was issued: The Most Holy Father, after mature deliberation on the matters presented, graciously granted the request in all respects. Notwithstanding these Apostolic Rescripts, in the year 1843, certain doubts and difficulties arose concerning the solemnity of the vows made by the aforementioned nuns, especially because the monasteries were established without Apostolic authority, and because, due to circumstances and civil laws, the Papal enclosure could neither be observed nor could be maintained. However, a more serious question arose in the year 1857, due

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to the actions of one of the nuns, who wished to contract marriage with a non-Catholic man; and also because of monasteries of other names, where nuns were making professions in American regions, without enclosure and without Apostolic authority. Therefore, the Holy Congregation of Propaganda Fide, having considered the gravity of the matter, wrote to the Archbishops and Bishops of those regions, requesting them to express their opinions on the issues that had arisen. The Bishops reviewed the matter in two provincial Synods, namely in the Synods of Baltimorensi and Cincinnatensi. With regard to the vows of the Visitation nuns, while many considered them to be solemn, opinions differed on the other matters, and instructions were requested from the Most Holy and Holy Father. It is important to mention the venerable letter that the Fathers of the Synod of Baltimorensi sent to the Roman Pontiff on May 9, 1858, namely: « We have deemed it necessary to request Your Holiness... »

[*Latin ed. p. 711*]

AMERICAN VOTES. 711 "Of greater importance, those questions and doubts which have arisen among us, may Your counsel and authority deign to assist us. We have, in several dioceses of this province, Religious women whose vows are often doubted, whether they are simple or solemn. Some communities seem to certainly possess the faculty of emitting all vows, granted by the Holy See. Concerning others, it is not so clearly established. There are some who are certain that their vows are solemn; yet, it may justly be feared that they are mistaken, if they have not fulfilled all the conditions required for this. From this, many doubts have arisen, which have not only given rise to very difficult questions, but have also often troubled the consciences of these Religious women, and of those to whose spiritual care they have been entrusted. Therefore, for the honor of God and the Church, and for the good of the souls entrusted to us, we have diligently examined this matter in the present Council in Baltimore, as far as it was possible, seeking what means would best serve to address these doubts and to promote the tranquility of consciences. At the same time, we have also carefully considered another question that arose during the discussion, namely: whether and to what extent solemn vows should be emitted by Religious women in this province, now and in the future. What the Fathers specifically thought about this matter will be apparent from the acts of the Holy Council. We indicate here briefly and summarily what seemed to us to be the case. First, after reading and considering the letters and rescripts, and other documents, which the Supreme Pontiffs Pius VII. and his successors wrote to the Archbishop of Baltimore in the cause of the Visitation of Religious women, or to the Religious women themselves, we unanimously declared that the vows emitted by the Visitation Religious women in this province are undoubtedly solemn vows. We do not believe that monasteries should be established in this region, in which solemn

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vows can be emitted, unless all the conditions, which the Council of Trent and the practice of the Roman Congregations usually require, are fulfilled in substance. It is true that solemn vows are not recognized, nor are they indeed acknowledged, by the civil laws of this region; but in this, there is nothing..."

[*Latin ed. p. 712*]

712 AMERICAN VOWS. "We now see the reason why vows of this kind should not be taken." Finally, Most Reverend Father, we earnestly implore Your Holiness to take care in preparing and sending us an instruction in which all the conditions are clearly and fully explained, which the Holy See judges necessary for this region, so that monasteries in which solemn vows are taken can be established, and any other matters that Your Holiness may deem appropriate, given the special circumstances of our region, etc.

The Archbishop of Cincinnati, on December 26, 1857, among other things, wrote to the Most Reverend Prefect of the Sacred Congregation for the Propagation of the Faith: "If the solemnity of vows requires three things, namely, the permission of the Supreme Pontiff; sufficient endowment so that the Religious may live, without manual labor or intellectual work; and Pontifical enclosure; it must be considered that in none of our convents are these three things found, especially the second. Therefore, it is not the case that the vows of the Sisters of Visitation, of Saint Ursula, of the Good Shepherd, and of Saint Theresa, or Carmelites, are solemn vows."

Many ecclesiastics and many Religious desire that the vows of the Sisters of Visitation, of Saint Ursula, of the Good Shepherd, and of Saint Theresa, or Carmelites, be declared and considered solemn.

Political changes and disturbances are no more to be feared here than in Europe. And if they occur, it is to be hoped that the religious state will not become impossible for this reason.

The Archbishop of Baltimore, on October A, 1858, among other things, wrote to the same Most Reverend Prefect: "Prejudices against monasteries are so prevalent among non-Catholics that it is often proposed to pass a law that would allow access so that an examination can be held, so that no Religious woman is detained against her will, and if it should happen that a Religious woman is detained for a long time, citizens rush in, threatening fire, unless she is restored to liberty. These very serious reasons prevent a stricter enclosure from being imposed: therefore, many prelates and priests are reluctant to administer solemn vows in the future, although the Religious women themselves often do so, considering it their honor and protection."

(1) It should not be overlooked that, in various documents which we have before us, in which the opinions of various prelates are referred to, it is never said that it is advisable not to administer solemn vows, because of

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the lack of enclosure, so that the Virgins dedicated to God are not deprived of this solemnity?

[*Latin ed. p. 713*]

AMERICAN VOTES. 713 Synopsis of discussions. THE VOTE OF THE FIRST CONSULTOR, SUMMARIZED. — The first consultant divided his vote into four parts, in the first of which he proposed the following question to be discussed: how easily those who violate the faith given to God pass into the world. Indeed, even nuns, who are ill-disposed to these matters, defend their vows with such firmness, that carnal men, who do not perceive the things that are of the Spirit of God, try to vindicate for themselves the license, which they call freedom. Let the non-Catholics explain such actions, or let them present examples from their sects, which at least have some resemblance to such actions, which among Catholics are always and everywhere, without any hesitation, produced as the usual fruits of true faith, which works through charity. Let the distinguished letter, translated from the English language into Latin, which the nuns of ten monasteries of the Visitation sent to the Roman Pontiff on June 13, 1857, be heard. "Most Holy Father. The nuns of the Visitation of the B.V.M., now residing in ten monasteries, which have hitherto been founded in the United States of North America, humbly pray at the feet of Your Holiness for the following grace. (They then mention the Apostolic Rescripts and continue.) "Therefore, the nuns of the Visitation, now residing in these provinces, have always been persuaded that, by virtue of Apostolic concessions, they belong to the Religious Order properly so called, and that, when they make their profession, they do so above all with this intention and with a firm will, to bind themselves to the service of God with three solemn vows of perpetual obedience, poverty, and chastity. Although it cannot be done by civil laws in force in this region, they truly make a vow of poverty, so that they wish to completely renounce dominion over their own things, and to retain no intention of using, enjoying, or disposing of them, except by the judgment and will of their Superiors. "Indeed, the civil laws here do not allow any of the nuns to be detained against their will in the monastery; nor do they prevent the nuns from observing all that pertains to the discipline of the regular observance: saving those changes which, as mentioned above, it was necessary to introduce for the instruction of the girls, to which the nuns of the Visitation diligently attend." Therefore, that all doubts may be more clearly elucidated and removed concerning this matter of such importance, the petitioners, since they have nothing older than to serve God perfectly in the religious state, and it is their all-consuming desire to remain steadfast in this holy purpose, and to observe until death, with God's help, all that accompanies the solemn profession, humbly and earnestly beseech Your Holiness to, notwithstanding the provisions of the civil laws in these provinces, graciously deign to ratify and confirm the religious profession

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of all of them concerning religious poverty, and to solemnly declare the perpetual vows of obedience, poverty, and chastity, which have hitherto been made, and which will be made in all and each of the monasteries of the nuns of the Visitation of the B.V.M. under the Institute of St. Fra-.

[*Latin ed. p. 714*]

714. AMERICAN VOWS. WHETHER MONASTERIES OF NUNS FOUNDED IN THE UNITED STATES OF AMERICA WITHOUT THE APPROVAL AND CONSENT OF THE APOSTOLIC SEE, ENJOY SOLEMN VOWS. At the beginning, the Consultor noted that there were present authors who taught three different opinions on this matter, opinions opposed to each other, as taught by Benedict XIV in his golden work on the diocesan synod, book IX, chapter 1, paragraph 9. The first of these opinions is that, since the Council of Trent, the Apostolic Approval is no longer necessary, and the permission of the Bishop suffices. Schmier, *Inrispr. can.* I. 3, tract. 1, part 2, chapter 2, section 1, paragraph 3; Wiestner, *Instit. can.* I. 5, title 31; Laurenius, *Forum eccles.* I. 3, title 48, chapter 1, question 997, paragraph 2. The second opinion is that the law of Apostolic Approval obliges only the Mendicant Orders, and not other Orders that do not beg, which are located outside of Italy. The third opinion is that nuns can erect monasteries solely with the license of the Bishops, whether in Italy or outside of Italy. After presenting these opinions of the authors, the Consultor argued that, considering the practice of the Church, from a time long before the epoch of Boniface VIII, up to the Council of Trent, the Apostolic Approval was considered necessary for the canonical erection of all monasteries, whether of men or women. And noting that, from the earliest centuries of the Church, more privileges were granted to monastic institutions by the Roman Pontiffs to whom the monks turned, whether for the erection of monasteries, or for the canonical election of abbots, or for the possession of goods, or for the reception of monks, etc. To these points, he presented numerous documents, concerning the Salesian institutions, both those currently existing and those to be erected in the United States of America. "Moreover, they strongly desire that Your Holiness should establish and declare that the power to dispense the aforementioned nuns from their vows after profession, or to relax them from those same vows, belongs to no one other than the Roman Pontiff, and that it should therefore be reserved to the Apostolic See." The Superiors of all the monasteries currently existing in these provinces acknowledge and testify that the matters are exactly as stated in this petition, and that all and each of the nuns of the same institute have professed with this intention, that they should make solemn vows. In this, the Superior herself, and another nun from each monastery, acting on behalf of the others, have signed this

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petition (written in the English language)."

[*Latin ed. p. 715*]

AMERICAN VOTES. 715, largely drawn from the annals of Monks. To the Mendicant Orders subsequently established, the Holy Pontiffs granted the faculty of erecting monasteries; but the Consultor asserted that this faculty had not been granted to Nuns, and he cited numerous papal documents which approved the foundations of monasteries, both in Italy and outside of Italy, before the time of Boniface VIII. Therefore, the Consultor stated, it should not be surprising that in the Constitution of Boniface VIII, *Cum ex eo*, concerning excesses of prelates, in paragraph 6, in which the privileges of the Regular clergy are revoked, no mention is made of Nuns; especially since, by the law of enclosure established by Boniface VIII in the Constitution *Periculoso*, Nuns were required to obtain Apostolic approval from the Roman Pontiff. Furthermore, the Consultor cited Boniface VIII's Constitution, *Cum ex eo*, the text of which is as follows: "Since it often happens that when the Preachers, Minorites, and other Mendicant Religious, in cities, towns, villages, or other places, either begin to establish new houses, or abandon those they have previously occupied, or transfer themselves to other places, various scandals arise, and frequent complaints are brought before the Apostolic See; desiring to provide for this, we hereby perpetually prohibit by this edict, that henceforth no one, or any of those mentioned above, who are endowed with any of these privileges (which we do not intend to support in any way contrary to the tenor of the present constitution), shall, in any city, town, village, or other place, either establish new houses, or change those they have hitherto occupied... without the special and explicit license of the Apostolic See, making full and express mention of this prohibition: if they act otherwise, their actions shall be null and void..." This Constitution was confirmed in the Clementine Decrees, and even penalties were added. From this, the Consultor cited the numerous subsequent concessions made by the Holy Pontiff for the erection of convents in various parts of the world, both to the Order of St. Dominic and to the Order of the Friars Minor, and also to the Carmelite Order. As for the Nuns of the Mendicant Orders, who, according to ancient custom, before the Constitution of Boniface VIII, were accustomed to seek Apostolic permission, the Consultor also affirmed, for the same reason.

[*Latin ed. p. 716*]

7 1 6 AMERICAN VOTES. It is clear that, after the aforementioned Constitution, the nuns themselves should have fled to the Holy See. He endeavored to demonstrate this with the same reasoning, indicating numerous Apostolic Bulls granted for the foundation of monasteries of nuns in various parts of the world, both of the Dominican Order and the Franciscan Order. And in these Bulls granting such concessions, clauses were repeat-

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edly inserted: "Notwithstanding any Bonifacian law or any other contrary Constitution," or "Notwithstanding any contrary Apostolic Constitutions," or "Notwithstanding any contrary laws." These concessions continued until the 14th century. The Consultor then proceeded to show, almost without number, the Bulls granted for the foundation of convents of mendicant orders during the 15th and following centuries, as can be seen in the Bullarium of the Order of Saint Dominic, volumes 2, 3, and 4, and in Wadding's *Annales*, from volume 9 to volume 11, inclusive, as well as in the Bullarium Carmeliticum, from page 155 to page 404. The same occurred with the foundation of monasteries of nuns of the mendicant orders; and in the Bulls of erection, derogations were made, either in general to Apostolic Constitutions, or specifically to the Constitution of Boniface VIII. In the 16th century, before the Council of Trent, the Consultor noted that the Holy Fathers had granted to Regular Clerics of the Theatines, the Barnabites, the Society of Jesus, and others, the faculty of erecting religious houses without the authority of the Apostolic See. Based on the documents presented thus far, the Consultor believed that it could be gathered what Benedict XIV wrote in his work on diocesan Synods, I, 9, chapter 1, paragraph 9, namely, that "long before the Council of Trent, the acquisition of new monasteries had been forbidden to the Regular [clergy], without express permission from the Apostolic See." He stated that after the Council of Trent, the monastic orders did not cease to petition for the faculty to erect monasteries. And to demonstrate this, among others, he cited the Brief of Urban VIII, dated April 19, which Muttarelli included in his work, in which the Supreme Pontiff, at the request of Louis XIII, King of France, confirmed with his authority the erections of the Congregation of Camaldoli in the Kingdom of France, and their professions, which had been made without the issuance of a decree from the Apostolic See. Furthermore, the Consultor cited the Decree of the Council of Trent, session 25, on reforms, chapter 3, in which it is stated: "Moreover, henceforth, similar places [monasteries]..."

[*Latin ed. p. 717*]

AMERICAN VOTES. 717 (Sterling of men and women) may be established without the permission of the Bishop in whose diocese they are to be established, provided that such permission has first been obtained: "The Consultor observed that such a decree does not expressly revoke the Constitution of Boniface VIII, nor does it derogate from existing discipline. To demonstrate this, he presented numerous documents drawn from the Bullarium of the Order of Preachers, in which the Holy Fathers, after the Council of Trent, granted the faculty of establishing monasteries of men, thereby derogating from the Constitution of Boniface VIII; he also indicated similar documents from the annals of Wadding and from the Bullarium of the Capuchins, pertaining to the Order of St. Francis. Furthermore, from the Bullarium Carmeliticum, among other granted permissions, Volume

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2, page 257, it is read that Sixtus V. granted the faculty of establishing a convent with the clause: 'notwithstanding any prohibitions to mendicant Orders' regarding the acceptance of new locations for habitation. To these observations concerning monasteries of men, the Consultor added further examples pertaining to monasteries of women of the Order of St. Francis established by Apostolic Briefs. Moreover, the Consultor stated that the Holy Fathers did not derogate from this discipline in subsequent times; but rather, they confirmed it, as he demonstrated with the Constitution of Clement VIII. For, according to the instituted law, published in the year 1603, the purpose of which Constitution he considered to be that Ordinary authorities could not grant permission to establish new convents 'unless (these are the words of the Constitution) having called the Priors, or Procurators, or other interested parties of existing convents in the same cities and places, and having the reason for such action known, it is determined that new convents of this kind can be conveniently maintained in the same cities and places, without detriment to others.' Such a Constitution was extended to all Orders, both mendicant and non-mendicant, by decree of the Sacred Congregation of Bishops and Regular Canons, issued by order of Gregory XV on August 17, 1622. The Sacred Congregation declared that such Constitutions had force not only in Italy, but also outside of Italy, as Tamburinius states in De iure Abbatum, volume 3, dub. 5, q. 1, n. 13. Since the aforementioned Constitutions do not mention the Constitution of Boniface VIII, it has not been derogated from.

[*Latin ed. p. 718*]

718 AMERICAN VOTES. Something further was added, the Consultor maintained. To strengthen this argument still more, he presented further examples of the Beneplacitum Apostolici granted for the erection of monasteries of Mendicant Orders, which, in the meantime, had superseded the Constitution of Boniface VIII; or even of Clement VIII. From the examples presented, we cite a Rescript issued by the Sacred Congregation of Propaganda Fide in the year 1636, in which it was declared: "The 'small houses' which the Capuchins receive in Hibernia, so that they may better dedicate themselves to the conversion of the heretics dwelling there, are not included in the Constitution of His Holiness concerning the erection of new monasteries or convents, or those not to be constructed without a number of religious; because mission stations are not convents, nor monasteries." After numerous other documents of this kind, and after the Pontifical Constitutions which will be discussed later, the Consultor presented Decrees and Resolutions taken from the records of the Sacred Congregation of Bishops and Regular Canons, which demonstrate the more recent practice of the Apostolic See in conducting these affairs. Thus, in the region of Rhegium, a house of nuns founded by St. Francis de Sales petitioned the Sacred Congregation in 1839 for canonical erection. However, the Sacred

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Congregation, having found their endowment to be insufficient, on February 12th, replied: "Provided that the profession of the simple vows remains, it is permissible to grant the grace of the Papal Enclosure." In 1843, the nuns petitioned again, and on January 13th, the following questions were proposed: "I. Whether and in what manner may a house of nuns founded by St. Francis de Sales be erected into a monastery with the profession of solemn vows? II. Whether the Papal Enclosure should be prescribed with the restrictions established in the Pontifical Constitutions and Decrees?" The Sacred Congregation responded: "To I. Affirmative, provided that the sum of seven hundred dollars is paid in numbered currency, and with caution regarding the useful investment. To II. Affirmative." In the region of Ferrara, in the year 1844, permission was granted to erect a monastery for Carmelite nuns of the Discalced Order, and although the founder of the monastery wished that the nuns should perpetually adore the Most Sacred Heart therein, a Rescript was issued granting permission to erect the monastery under the rule of St. Theresa alone, after a benefactor had provided the necessary funds in a legally valid form.

[*Latin ed. p. 719*]

AMERICAN VOTES. 719 votes were cast in favor of a donation of 14,000 scudi for the dowry, and the monastery buildings were properly constructed. In the remaining cases, it is not expedient. A certain community of nuns of Saint Clare was established in the year 1650 with simple vows; by decree of the Holy See in the year 1847, they were admitted to make solemn vows. Also, by decree of January 31, 1854, the Bishop of N. was charged with the erection of a monastery for Discalced Carmelite nuns, who, in the meantime, could not make vows other than simple vows, and the judgment regarding the taking of solemn vows was postponed. In Caenomanen, from an audience with the Holy Father on July 31, 1818, the Bishop was charged with erecting a monastery with perpetual and inviolable enclosure, and with admitting these nuns to the reception of the religious habit, and with the profession of the Rule of Saint Benedict of the stricter Cistercian observance, etc. Also, from an audience with the Holy Father in Gandevenen, the Sisters of Charity of Jesus and Mary requested the faculty to make solemn vows; however, on September 24, 1816, among other things, it was decreed: "For the Holy See, especially since the Council of Trent, does not permit, nor does it grant, that in societies, or communities of women, solemn vows be made, unless they live under inviolable enclosure, and live perpetually, etc." By decree of February 13, 1832, it is written: "The Holy See, having considered the petitions of the Bishop of Vich, charged him to proceed with the formal erection of the aforementioned monastery of the Most Blessed Virgin, which had already been approved by the Holy See, with legitimate enclosure, and to introduce some nuns there, and in due time

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to admit them to the profession, and respectively to the habit, etc." In Iesi, on the day of the Vows, December 16, 1863, the matter was discussed concerning a community of the Third Order of Saint Dominic, which had been established many years ago, and the nuns were of the opinion that they should make solemn vows. After doubts arose concerning the solemnity of the vows, the Holy Congregation judged: that the vows were simple, and that it was not expedient for them to make solemn vows at this time. Also, in Spoleto, on March 16, 1838, in the Vows. In these cases, the Consultor was of the opinion that the vows had been judged to be simple due to the lack of canonical erection and Papal enclosure (I). (1) It is expedient here to briefly state both. In Iesi, the matter concerned the monastery of Iesi, and the acts of the nuns of the Purification of the Third Order of Saint Dominic were presented, so that a careful judgment might be made, concerning the vows of Saint Dominic, which formerly were not otherwise.

[*Latin ed. p. 720*]

720 AMERICAN VOWS. Furthermore, after omitting other matters, the learned Consultor presented several requested and obtained Rescripts from the Holy See concerning the establishment of monasteries for nuns, not only outside of Italy, but also outside of Europe, and specifically in the regions of Americae, in which Rescripts from the Holy See, among other laws, included the Papal enclosure, for a small institution of pious virgins, in which the nuns made simple vows under voluntary enclosure. More recently, a Bishop, N., wished that these pious virgins should wear religious habit, and that they should make solemn vows before the Bishop, using a prescribed formula. In the formula of profession, among other things, it is stated: "I promise... to observe the rules established in this monastery, approved and declared by the preceding Bishops." After the suppression of the order, it was restored by the Ordinary, and the profession was renewed, "so that the doth the nuns would be convinced that their vows were solemn." Consequently, a doubt arose, because the Bishop who instituted this change had not obtained permission from the Holy See to convert the institution of simple vows into a true monastery. Therefore, the matter was discussed in the Holy Congregation of Bishops and Regular Canons under the following doubts: I. "Whether the vows made by the religious of the Third Order of S. Dominic in the monastery of Purification in the city of Aesina should be considered solemn vows?" And, negatively: II. "Whether it is necessary to petition the Most Holy Apostolic See for the approval of the same monastery under the Rule of the Third Order of S. Dominic, and for the innovation of the vows made by the religious living there, so that they may be considered solemn vows?" The Holy Congregation decided to respond to the first question: "that the vows are simple vows," and to the second: "that, for the present, it is not

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advisable," and to the third: "in accordance with the opinion."

In the aforementioned case of Spoleti, we are dealing with a monastery of nuns of the Order of S. Benedict, which was suppressed by Apostolic authority, and in its place a conservatorium was established for endangered virgins, in which some nuns of S. Benedict remained. Therefore, the conservatorium, established in place of the same monastery, retained some of the Rule of S. Benedict, as a kind of standard of life, and the habit of the nuns of that Order; however, it never had a canonically elected superior, nor did it recite the canonical hours, nor did it have enclosure. Nevertheless, the virgins made vows before the Bishop, and that using the formula that was in use in monasteries of solemn vows. These professed virgins were under the impression that only the vow of chastity was solemn. However, the Bishop, observing what has been described, considered that this conservatorium could not be considered part of the religious family of the Order of S. Benedict; and, on the contrary, since the solemnity of a vow is invented only by the institution of the Church, as stated by Boniface VIII, vows made in any religious order that has not been approved cannot be called solemn vows; therefore, it was the opinion that the vows of the aforementioned conservatorium could not be considered solemn. Therefore, the following doubts were proposed to the Holy Congregation: I. "Whether the vows made by the virgins of the conservatorium of S. John in Spoleti are solemn vows?" And, negatively: "whether the vows are simple vows?" II. "Whether it is advisable that they henceforth profess according to the form of profession hitherto used?" The Holy Congregation responded: "that it is not certain whether the vows are solemn, and that the Archbishop should prescribe a new form of profession that is suitable for the Oblates."

[*Latin ed. p. 721*]

AMERICAN VOWS. 721, remaining connected with the same enclosure, constantly explains, inculcates, and prescribes that it must be entirely observed. Furthermore, citing the authority of Solarzano on the Law of India, Book 1, chapter 23, paragraph 18 and following, to confirm his opinion, he considered that the answer to the proposed question should be negative; and thus, he opened the way for himself, as a Consultant, to resolve other doubtful matters, which, for the sake of brevity, we are compelled to omit, as they consist more in fact than in law, and we proceed to the vote of the second Consultant, summarized below.

VOTE OF THE SECOND CONSULTANT, SUMMARIZED. – Dividing the subject matter of his vote into three parts, the second Consultant proposed to investigate three analogous questions to those proposed by the first Consultant, in accordance with the norms of canon law. The first question was presented with the following words:

"IS IT AN ESSENTIAL CONDITION FOR THE SOLEMN VOWS OF RELIGIOUS WOMEN BELONGING TO INSTITUTES WITH SOLEMN

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VOWS, THAT THE MONASTERY BE ERECTED BY APOSTOLIC AUTHORITY, AND THAT THE PAPAL ENCLOSURE BE STRICTLY OBSERVED WITHIN IT?"

Regarding this question, the Consultant argued as follows: "Considering the ancient common law for the erection of new monasteries, the permission of the diocesan bishop was considered sufficient, as appears from various Holy Canons. Thus, in canon 18, question 2, of the canons concerning Monks, it is written: 'No one should presume to begin or found a new monastery unless with the permission or approval of the bishop.' Similarly, in canon 2, question 18, of the canons concerning Cells, it is written: 'We forbid new cells or congregations of monks to be established without the knowledge of the bishop.' At the Chalcedon Council, in the sixth session, the following was decreed: 'Those who truly and sincerely follow a solitary life should be duly honored; but since some, wearing the habit of monks, disturb ecclesiastical affairs and civil matters, wandering indifferently through cities, and also attempting to establish monasteries, it was decided that no one should erect or construct a monastery or a house of prayer without the knowledge of the bishop of the city.'"

The Consultant then inquired whether the first law that limited this power was the decree issued by Boniface VIII in the year 1298, which is referred to in title "De Excess," preamble, chapter 1, paragraph 1. (i) This decree states that it applies to cities, towns, or villages, and to: "Since, in other places, Minor Orders and other religious establish new dwellings, or have previously established them..."

[*Latin ed. p. 722*]

722 AMERICAN CANONS. In this Decree, the Consultor noted that, with Fagnano, in chapter Non amplius de Inst. number 61, the faculty had been taken away from Bishops only with regard to the Mendicant Orders, but that this faculty remained for them with regard to eremitical places, and for non-Mendicant Orders. Gregory X, in the ecumenical Council of Lyons, in chapter uniede Relig, domib, in the 6th, forbade excessive diversity of religions, lest confusion arise. And concerning the Mendicant Orders confirmed by the Apostolic See, but which, after that same Council, were supported, among other things, by uncertain alms collected publicly, he prescribed that Professors of these same Orders should neither acquire a house, nor any place, anew, nor should they be able to alienate houses, or places, which they possess, without the special license of the same See. Clement V, in Clem. unie, de poenis ad refraenandos Mendicantes transgressores Constitutionis Bonifacii VIII, added penalties for Mendicant transgressors of the Constitution of Boniface VIII. From Clement V until the Council of Trent, no other Constitution intervened concerning the erection of monasteries. The Holy Council, in Session 25, chapter 3 de Regni, prescribing that in all monasteries, both of men and of women,

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possessing or not possessing immovable property, only that number be constituted and preserved which can conveniently be sustained either from the proper revenues of the monasteries, or from customary alms, adds: and that no similar places be erected henceforth without first obtaining the license of the Bishop, in whose diocese they are to be erected, lest, when such things occur, diverse scandals arise, and frequent complaints are brought before the Apostolic See: wishing to provide for this, we perpetually prohibit by edict, that henceforth no one, or some of those mentioned, with any privileges concerning this matter, (which we do not wish to grant to them against the tenor of the present Constitution) should presume to receive anew, or to change, or to transfer to others by sale, or by any title of alienation, houses, or places, in any city, castle, village, or place whatsoever, without the special and express license of the Apostolic See, making full and explicit mention of this prohibition: if they act otherwise, we declare it void. However, this does not apply to those who have chosen to lead an eremitical or solitary life, with the permission of their Superiors (because they may acquire, and change, cells, dwellings, or habitations in a hermitage, or in places where there is no human habitation nearby).

[*Latin ed. p. 723*]

AMERICANA VOTORUM. /23 Clement VIII, in the Constitution *Quoniam ad institutam*, dated July 23, 1603, also prescribed the manner in which Bishops should grant the license prescribed by the Council of Trent: Local Ordinaries cannot grant permission to establish new convents of any mendicant order within the jurisdictions of their cities and territories, unless, after having summoned and heard the priors or procurators of other existing convents in those same cities and territories, and after having considered the reasons for and against, it is determined that new convents of this kind can be conveniently maintained in those cities and territories without detriment to others. Gregory XV, in the Decree *Cum alias*, dated August 17, 1622, declared that local Ordinaries should not grant such permission to any order unless the consent of the superiors of other existing convents or monasteries within a space of four Roman miles has been obtained, and unless it is first proven that at least twelve religious can be supported from the revenues or alms. Urban VIII, in the Constitution *Romanus Pontifex*, dated August 28, 1624, in order to remove abuses and disputes that arose because certain orders or institutions did not observe the prescribed forms due to privileges granted to them, revoked such privileges or concessions, and decreed: Furthermore, to the superiors of mendicant orders, congregations, societies, and other regular institutions... we forbid and prohibit, under pain of excommunication, that they dare, or presume, without the express license of the Ordinaries, and observing in all things the Sacred Canons and the Decrees of the Council of Trent, as well as the Constitutions of Blessed Clement VIII, which begin with the

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words *Quoniam ad institutam*, and the Decrees issued by the authority of the same Clement, and also the Memorials of Gregory XV, *Romanus Pontifex*, published above, to receive, erect, found, or otherwise establish, or to complete and conclude any undertaking whatsoever, new monasteries, colleges, houses, convents, and other regular places of this kind. Finally, Innocent X, in the Constitution *Instaurandae*, after suppressing in all of Italy and the adjacent islands...

[*Latin ed. p. 724*]

724 AMERICAN VOWS. Regarding each Order, in those places where regular discipline could not be maintained due to a lack of religious, the following is stated in §. 5: "But it is not enough to prevent evil, unless also the cause and root of evils are removed. Therefore, we perpetually prohibit, by this edict, in accordance with the blessed and venerable Constitution of Boniface VIII, which begins: 'Because of the established...' and other decrees issued by our predecessors, the Roman Pontiffs, concerning the erection of new convents, we renew their provisions, add to them, and, with full and explicit mention of this prohibition in writing, we forbid anyone from the Regular Orders, whether mendicant or not, from Congregations, Societies, or any other Institute, even the Society of Jesus, presuming to, in any city, town, village, or place of habitation, newly receive houses or places, or to begin or found monasteries, convents, or colleges, without the special license of the Apostolic See; and if they act otherwise, they incur, by that very act, the penalties of deprivation and other punishments, etc. Furthermore, we intend, in the foregoing, also to provide, as we deem it expedient, beyond Italy and the adjacent islands." Having explained these documents, the Consultor presented the various opinions of theologians and canonists, and divided them into three categories. The first is those who teach that, after the Council of He was praying, "Father, I will that where I am, they also whom thou hast given me may be with me: that they may see my glory which thou hast given me, because thou hast loved me before the creation of the world." thus thought Navarr, Bordón, Passerin, Fagnan, ReifFest, and others cited by him. The main reason they give is that the Council, in the aforementioned chapter 3, when it forbade the erection of new convents without the Bishop's license, implicitly repealed the decree of Boniface VIII. This reasoning is illustrated by the following passages from the Constitutions of Fagnanus in the cited work, chapter Non amplius de Instit. n. 66: "That Constitution (of Clement VIII) - " was subsequently amended by Urban VIII, after revoking the faculties granted to the Regulars to erect convents in any place with only the Ordinary's license, as stated in his Constitution. Therefore, conversely, if the prescribed form in the Constitution of Clement is observed, mendicant convents can be erected with the Ordinary's license, and there will be no need for the license of the Apostolic See, and this understanding has long been approved by the

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Sacred Congregation of the Council, which judged that, for the erection of a monastery, it is not necessary to require the license..."

[*Latin ed. p. 725*]

AMERICAN VOTES. 725 "Ordinary jurisdictions are to be observed, but the decree of Clement VIII must be maintained, unless a dispensation is granted by the Apostolic See, because then it can be established without the permission of the Ordinary." Therefore, it is not permissible to accept the interpretation of those who said that the Council, in the aforementioned chapter 3, did not abolish the constitution of Boniface VIII, but rather, without the permission of the Apostolic See, wished that the permission of the Ordinary also be required; indeed, according to the opinion of the Sacred Congregation, when the establishment is made with the permission of the Pope, the permission of the Ordinary is not necessary; and when it is made with the permission of the Ordinary, the permission of the Pope is not necessary; but only the solemnities of the constitution of Clement must be observed, and I have often seen this observed (1); for the same Sacred Congregation, both to me as Secretary, and in previous times, approved many establishments of monasteries made by Ordinaries without the permission of the Apostolic See. And in other cases, it considered that a Bishop is not prohibited, with the consent of the Chapter and those concerned, and without prejudice to the Rectors, from erecting a secular church into a monastery with ordinary authority. Another opinion is that of those who distinguish between Mendicant and non-Mendicant Orders, teaching that the Council did not abolish the constitution *Cum ex eo* of Boniface VIII, but added a new form to it, so that for the erection of Mendicant monasteries, after the Council, the permission of the Apostolic See and the Bishop is necessary. However, they confirm this with the constitution of Urban VIII, in which the erection of monasteries is prohibited without the express permission of the Bishop, and without observing the form prescribed by the Holy Canons. The Holy Canons, however, require only Apostolic permission for Mendicant Orders. As for non-Mendicant Orders, these same authors show that (i) The authority of Prosper Fagnani speaks strongly about giving more weight to the practice of the Sacred Congregations, who were most experienced in this matter. Indeed, Paul V, in the place of the celebrated John Francis Fagnani, his father, appointed him to the Sacred Congregation of the Council of Trent as a Secretary in his second year above twenty; subsequently, he was appointed to the Sacred Congregation regarding the affairs of Bishops and Regular Canons; then to the Apostolic Visitation; and then to another concerning the state and reformation of Regular Canons; and he also had the mandate to explain the Canons in the highest Sacred Penitentiary Tribunal; afterwards, he served in the same Tribunal, with the same seal affixed to him, in several sacred congregations, and, despite the misfortune of blindness, he died in the ninety-first year of

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his age.

[*Latin ed. p. 726*]

726. CONCERNING THE ERECTION OF MONASTERIES IN AMERICA. Orders outside of Italy can erect monasteries with the sole permission of the Bishop: for the Sacred Canons, or Chapters, "Cum ex eo," chapter 6, and "Clementinae," concerning penalties, as mentioned above, speak expressly of Mendicant Orders; therefore, Orders that are not Mendicant are not included under this law, to which only Mendicant Orders are subject, for whom it is forbidden, according to the Constitution of Innocent X, to erect monasteries in Italy without the permission of the Apostolic See. To confirm this opinion, the decision 745, paragraph 2, of the Sacred Rota is cited. To remove the difficulty that might arise from the work of Benedict XIV, "De Synodis, Dioecesibus," book 9, chapter 1, number 9, the following was observed: Benedict XIV did not speak of this question directly, but rather incidentally and superficially; however, considering the reasons that he presents, which concern only Mendicant Orders, it must be said that Benedict XIV had only such Orders in mind when he stated that it is not permitted outside of Italy for Regular Canons to erect new monasteries solely by the authority of the local Bishop; and in the decisions of the Sacred Rota that are cited, the matter concerned a certain Mendicant convent. Finally, a third opinion, which seems to be more common, holds that all Regular Canons of any Order, even outside of Italy, cannot erect monasteries unless with Apostolic and Episcopal permission. The main reasons given are as follows: First, the Council of Trent did not derogate from the previous Sacred Canons or Constitutions, which prescribe Apostolic permission; for it is perfectly possible for both to coexist. As is read in the aforementioned passage: "Since, before the Council of Trent, the acquisition of new monasteries was forbidden to Regular Canons without express permission from the Apostolic See, as can be seen in chapter 6 of the "Religionum" section, and in chapter 6 of the "Cum ex eo" section concerning excesses, it is clear that the Council of Trent did not detract from the previously established authority of the Apostolic See, but rather it was established that, in addition to that, the Episcopal authority and permission must also be present in such erections. Therefore, the common and accepted opinion today, both in the tribunals, is that Regular Canons, both within and outside of Italy, cannot found new monasteries or convents, or colleges, solely by the authority of the local Bishop, but that the permission of the Apostolic See is also necessary. All of these matters were carefully discussed and defined on the occasion of the same cause concerning the foundation of the Hospitium of Eysttsten, in which three decisions of the Rota were issued, one on May 10, 1726, another on April 28, 1728, before

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Gamachaeo, and a third before Ratto."

[*Latin ed. p. 727*]

AMERICAN VOWS. 727 Bishops and the permission of the Holy See; for one does not exclude the other. Secondly, Urban VIII, in the Constitution *Romanus Pontifex*, as mentioned above, with the words: "even those who are not mendicants," includes even those who are not mendicants; for the word "even" is amplifying; which is confirmed by the immediately following words: "Congregations, Societies, and other Regular Institutes." Furthermore, to all of these, He prohibits the erection of monasteries and convents, unless with the express permission of the Ordinaries, and with all things observed, and in all respects, according to the form of the Holy Canons. But the Holy Canons require Apostolic permission; therefore, etc. Thirdly, Innocent X, in the Constitution *Instaurandae*, prohibits all Regulars from erecting convents without prior permission from the Holy See. And do not say that such a Constitution refers only to Italy and the adjacent Islands. For this limitation is only valid in the first part of the Constitution, in which convents are suppressed in those places, but not in the second part, in which the erection of new convents is prohibited. Having briefly explained these three points, the Consultor observed, considering the reasons presented on both sides, that the second opinion seemed to be based on a more solid foundation. For Urban VIII, in the Constitution *Romanus Pontifex*, prescribing the observance of the form of the Holy Canons, and the Council of Trent, sufficiently declared that the Council did not derogate from them: but the Holy Canons, of which we are speaking, refer only to the Mendicant Orders: therefore, etc. The Consultor declared who should be included under the name of Mendicants: and with Sanchez de Praeceptis, book 1, chapter 6, paragraph 7, number 115, he says: "Those who are called Mendicants are included, to whom, by their Rule, or by Constitutions approved by the Apostolic See, it is forbidden to have revenues and possessions in common, although they may have them illicitly, contrary to the prohibition, or licitly, by dispensation from the Pontiff, as is done today in Trent, session 26, on Regulars, chapter 3, with all Mendicants except the Minor Observants and the Capuchins. Therefore, the Mendicant Orders include the four older Orders of St. Dominic, the Minorites, the Eremites of St. Augustine, and the Carmelites, of which mention is made in chapter one, section 6, concerning religious houses; and also the Orders of the Servants of Mary, the Minimites of St. Francis" Paola, St. Jerome, as he declared.

[*Latin ed. p. 728*]

728. AMERICAN VOWS. Saint Pius V, in Constitutiones 35 Romanus Pontifex, and 48 Apostolicae Sedis, and the Society of Jesus, by the Bull *Dum indefessae*. As for other Orders which are not mendicant, the Consultor testified that there was no law clearly expressed which imposed the

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obligation we are discussing outside of Italiam. However, when it is a question of the form to be observed for the validity of an act, a certain and clear law is necessary; otherwise, one would have to remain in doubt regarding the validity of the act. He rejected the arguments of the third opinion. For in the Constitutions cited, either a method is prescribed by which Bishops must grant permission, or privileges are revoked, and the faculties granted are reduced to the ancient form: a new law is not established in this matter. Furthermore, with regard to the Constitution of Innocent X, the Consultor noted, in *Fagnanum, loc. cit., n. 71*, that he had testified that said Constitution had been compiled by him in the Holy Congregation concerning the Status of Regular Canons. Therefore, he was in a position to know the opinion of others. Moreover, Fagnanus stated that the aforementioned Constitution had not yet been promulgated within the fines of Italiam, and the adjacent insulas. And indeed, the last words of that Constitution: "We intend, in the premises, also to provide, as We may see fit, beyond Italiam, and the adjacent Insulas," refer to a future disposition to be made. The Consultor observed that, in practice, the supreme Tribunals had not always followed the same opinion in judging cases; from which he argued that there was no clear law which imposed the obligation we are discussing upon all Regular Canons outside of Italiam. Moreover, if all Regular Canons were accustomed to requesting such permission from the Apostolic See, this does not demonstrate the necessity of permission. However, the Regular Canons act properly in this matter, especially in a question which is very complex, so that the erection of monasteries may obtain firm stability. With all of the above premises, the learned Consultor proceeded to address those matters which are more closely related to our question. From this, he asked himself: is the permission of the Holy See necessary for the erection of monasteries of nuns, in addition to the permission of the Bishop? And at the beginning, he observed that there were two opinions of the authors on this matter as well. For some, with Gavanto in *Manual, verb. Monialium Monasteria*; Tamburino in *de iure Abatissarum*; and Barbosa in *de Potestate Episcopi*, contend that the permission of the Holy See is necessary.

[*Latin ed. p. 729*]

AMERICAN VOTES. 729 concerning the erection of monasteries for nuns, because nuns are included under the same canonical regulations as those pertaining to regular [canons]. The principal argument for this opinion is drawn from two declarations of the Holy Congregation, one cited by Lezana on April 12, 1615, and the other reported by Gavanto in the aforementioned location, in which it is stated that monasteries for nuns should not be erected without special permission from the Holy See; the other is from the Sacred Congregation of Rites in Ulixboren, on July 17 of the same year, which Barbosa cites in *Apost. Decis, collect. 62, n. 3*, where

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it is stated: ”Nuns cannot be transferred to newly erected monasteries unless it has previously been established that these monasteries were built with Apostolic authority, and that, after a prior visitation of these nuns, they have been found to be suitable and adapted to them, and so arranged that there is no need to enter the building for any construction purpose, such as with masonry or other materials.” Another opinion, taught by Rebuff. in *praxi tit. de erect. in Colleg. n. 1*, Fusch. de *Visit. I. 7, c. 1, n. 6*, Gambar. de *Offic, et potest, legat, de laler. I. 5, c. 3, n. 3*, Garzia de *Benef. p. 12, c. 5, n. 4*, and Pignatel. t. i, *consul. 179 in fine*, based on *Can. Quidam, et Can. Qui religiosis foeminis, et seq. 18, q. 2*, to which neither the Council of Trent nor pontifical constitutions are an exception. For nuns do not come under the name of ”mendicants,” as Sánchez states in *De praeceptis Decaí. I. 6, c. 7, n. 116*; because, as Angel and Sylvester rightly say, nuns do not have, by privilege, the right to have revenues in common. Nor do nuns come under the name of ”regulars” in a way that is objectionable. Therefore, when the Council of Trent and pontifical constitutions intended to include nuns under certain regulations, they expressly declared it, for example, as in *Concil. Trid. sess. 25 de Regul. c. 1*: ”Regulars, both men and women, cap. 2, Regular canons, both men and women, cap. 5, All monasteries and houses, both of men and women, likewise, cap. 11 and 15; and similarly, Clement VIII in the *Const. De largitione munerum*, and others. Furthermore, Pignatell. in the aforementioned location, gives reasons why nuns are not included under the regulations we have mentioned above, namely, because the regulation, which concerns a particular matter, does not apply unless it finds the quality in the matter that was expressed by the legislator. And because the intention does not extend beyond those for whom the end is intended; and in this case, when the foundation of monasteries...

[*Latin ed. p. 730*]

730 CONCERNING AMERICAN VOWS. It is not held that the intention to assist the needs of Religious is extended to those who are not subject to such needs, such as nuns, who possess their own endowments, etc. It is said that the Holy Congregation of the Council has approved this opinion; Fagnanus, loc. cit., n. 69. However, given this diversity of opinions among such esteemed authors, the Consultor argued that there is at least no certain law that requires Apostolic approval for newly established monastic institutions of nuns, which have already been approved by the Holy See. Hence, the Consultor pointed out the difficulty arising from the practice of the Holy See, whereby new monasteries of nuns are not erected without Apostolic license. The Consultor further noted that this practice is introduced for other reasons, not from direct law, as declared by Fagnanus in Chapter ”On the Office of the Ordinary,” n. 53: ”It sometimes happens that there is doubt whether Bishops are permitted by their ordinary au-

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thority to erect a monastery of nuns, in accordance with the aforementioned chapter 3, session 25, of the *Registrum*." It is the practice that erections are carried out by the Apostolic See, "both because of the graces, indulgences, privileges, and exemptions which are obtained from it; and because of the ability to educate" an Abbess from other monasteries for the establishment of a new monastery. Since this ability has been taken away from Bishops by the Constitution of Pius V concerning the enclosure of nuns, as Pius V himself declared, it is not usually granted except for monasteries erected by Apostolic authority. Supplications are submitted to the Most Holy Congregation of Bishops and Regulars, where the conditions and qualities required for this purpose are examined, namely that the erection not be undertaken for a smaller number than twelve nuns of Christ; that the endowment be established not in *censibus* (Uzes), but in stable and productive goods, free from all burdens and with a purified or to-be-purified faith; and that the income for the aforementioned number of twelve not be less than 300 ducats of gold, and greater according to the quality of the location, in addition to the ordinary dowries brought by the young women; that the monastery be erected within walls in a healthy and sheltered location; that the building, enclosure, interior and exterior church, a separate place for novices, and all necessary offices, be sufficiently equipped; and other similar things. Therefore, the obligation of obtaining the permission of the Holy See for the erection of monasteries of nuns does not derive from a direct law, which requires this license.

[*Latin ed. p. 731*]

AMERICAN VOTES. The 73rd proposition prescribes, but indirectly, through the law of enclosure and others connected to it. From this observation, the Consultor concluded that, if a monastery of nuns of a certain Order, already approved by the Holy See, was established solely with the permission of the Bishop, according to the Council of Trent, it does not necessarily follow that the nuns' professions are null. For many things are prohibited which, if done, obtain validity. Especially when it concerns a solemn act, from which grave consequences derive; among these is that no marriage is then contracted. Therefore, in order that such a solemn act of profession be declared invalid, the law must be "entirely clear and certain, as is indeed the case in similar matters, when it is a question of the age for making vows, etc." The Consultor cited a document reported by Pignalelli, volume IV, Consultation 74, number 5, which seems to be of greater importance. This document shows that the Holy See has maintained the validity of the nuns' vows, given in an institute already approved by the Holy See, even if certain monasteries were established solely by the authority of the Bishop (1), and only observed the enclosure with regard to departure, and not truly with regard to entry, because of the fourth [vow]. This is the tenor of the document as reported by Pignatelli:

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"Alexander VII, for the future memory of these things, etc. Indeed, recently, certain daughters in Christ, nuns of the reformed monastery, or hospice, called of the Mercy of Jesus, of the Order of St. Augustine, in the town called Dieppe, in the diocese of Rouen, have explained to us that they are accustomed to make solemn vows of religion, namely of poverty, chastity, and obedience, as well as of hospitality towards the poor and the sick, and also to make a fourth vow, etc., and that they observe the enclosure, the Superior being for three years, etc., in other places, and regular houses are founded under the same Rule and Institute with the permission of the Ordinary, etc. But, as the same explanation adds, despite these things, some religious women, perhaps out of envy for the aforementioned, assert that they are not true professed and regular, and from this, their status could be undermined, and many disturbances and inconveniences could arise; therefore, they humbly implored us to provide for them, with a benevolent Apostolic act, so that they might obtain a suitable declaration. We, therefore, having heard the aforementioned, inclined by special favors and graces, and in response to such supplications, with the advice of our venerable brothers, Cardinals, and with the consultation of Bishops and superiors of regular orders, declare and decree by these presents that the nuns in the aforementioned monastery, according to their own Rule and vows, are truly religious, by the authority of the Apostolic See, etc. On July 19, 1661, in the ninth year of our pontificate."

[*Latin ed. p. 732*]

732. AMERICAN CANONS. The vow of hospitality. The Holy See has declared that these nuns are truly religious; as, conversely, the Holy See responds that nuns who take only simple vows are not truly religious. After these remarks, the Consultor began an investigation into the other part of the doubt, whether the absence of Papal enclosure in a certain monastery renders the religious profession invalid; and he immediately noted that religious enclosure consists of two parts: one is the observance of the enclosure by not going out of it; the other is the observance of the same enclosure, by not admitting secular or lay persons within it. He observed, however, that the nature of enclosure itself is not essential to the religious profession; for it arises either from a vow added to others, according to the formula approved by Urban IV, as Tamburinus states in *De iure Abbatissarum*, Disp. 18, q. 7, or from an ecclesiastical precept. Boniface VIII, in his universal Constitution, *Periculoso de statu Regularium*, cap. 6, was the first to establish the law of enclosure: "By the present Constitution, we establish and decree perpetually and irrevocably that all and each nuns, present and future, of whatever religion or order, existing in any part of the world, must henceforth remain perpetually enclosed in their monasteries, so that none of them, whether tacitly or expressly professing their religion, shall or can, for any reason or cause whatsoever (unless, indeed,

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it should clearly appear that some of them are suffering from a disease so evident that they cannot remain with others without grave danger or scandal), have the faculty of leaving the monastery..." This Constitution was renewed in the Council of Trent, Session V, on Regular Canons, cap. 5, which commanded all bishops, under the sanction of divine judgment and the threat of eternal damnation, to diligently restore the sanctity of enclosure in all monasteries subject to them, and to preserve it where it has not been violated. After these weighty words, the Council itself sufficiently explains where such enclosure is to be maintained: "To no nun shall it be permitted, after profession, to leave the monastery, even for a short time, under any pretext whatsoever, unless for some legitimate cause approved by the bishop, notwithstanding any indulgences or privileges."

[*Latin ed. p. 733*]

AMERICANA VOTORUM. 733 Reconsidering these two Decrees, a Consultor, among other things, observed that they agree in imposing the law of enclosure upon professed nuns, as the Holy Congregation of the Council declared concerning Tertiary nuns, or of Penance, who, if they have made profession, ought to be compelled by the Bishops to observe enclosure; but if they have not made profession, the Constitution of St. Pius V. concerning the pastoral office must be observed. Therefore, only professed nuns are bound by the law of enclosure in these two Decrees; not others who do not emit the three essential vows. Furthermore, these two Decrees differ greatly in that the Council of Trent derogated from certain privileges, and moreover, granted Bishops the faculty of granting permission for nuns to leave, for a legitimate reason. St. Pius V., in renewing both Decrees in his Constitution concerning the pastoral office, states: "And if any nuns should be found, who, even by an unforgettable custom, or by their Institute, or by their foundation, following their Rule, stubbornly resist this enclosure, or in any way oppose it, the Ordinary, together with their Superiors, shall compel them, as rebels and incorrigible, to strictly observe the same." Also, women who are Tertiary nuns, or of Penance, of whatever Order, living in a congregation, if they themselves have made profession, so that they have emitted a solemn vow, are strictly bound to enclosure, as has been stated; but if they have not emitted a solemn vow, the Ordinary, together with their Superiors, shall exhort and strive to persuade them to emit it, and to profess, and after its emission and profession, to subject themselves to the same enclosure; but if they refuse, and any of them are found to live scandalously, they shall be severely punished. To all others, however, who wish to live entirely without the emission of profession and without enclosure, we forbid and perpetually prohibit them from receiving, in the future, any others whatsoever into their Order, their Religion, or their Congregation. But if, contrary to this our prohibition, and this Decree, they receive anyone, we declare them utterly incapable of living in such

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a manner, and we declare their professions and receptions to be invalid and null, as we also declare in the present Decree, and we annul them. Furthermore, the same Pontiff, in another Constitution,

[*Latin ed. p. 734*]

734. CONCERNING AMERICAN VOWS. It prescribed, in a certain way, limiting the faculty granted to Bishops by the Council of Trent: "Furthermore, even on the occasion of infirmity, or of other [monasteries], under the pretext of, unless it be due to a great fire, or to the infirmity of leprosy, or to an epidemic, [monasteries] aforementioned may leave, but even in the aforementioned cases, it will not be permitted to leave those [monasteries], except for a necessary time." These Constitutions were subsequently confirmed by Gregory XIII in the Constitution *Deo Sacris*, and by Benedict XIV in the Constitution *Salutare*, and in another concerning the discipline of regular canons. Having explained these matters pertaining to the law of enclosure, the Consultor inquired whether such an enclosure, which is commonly called "papal enclosure," is an essential condition for the solemnity of vows, so that where such an enclosure does not exist, the vows of the religious are necessarily simple. And above all, he investigated what real difference exists between that distinction of vows, which has been introduced in common usage, whereby one is called "papal enclosure" and the other "episcopal enclosure"; and he noted that in law, such a distinction does not exist. For indeed, religious women are bound by enclosure, and Ordinaries are obliged to oversee the observance of such enclosure. Having considered this manner of speaking, by which the term "papal enclosure" is understood, it is understood to be that over which Bishops cannot dispense, except in cases contemplated in Pontifical Constitutions, or in similar cases, according to the more probable opinion of theologians. Enclosure, on the other hand, is called "episcopal" when the Bishop freely dispenses with it. Furthermore, he noted that a reasonable and legitimately introduced custom, according to common opinion, can moderate the rigor of the laws imposing enclosure, as among others, *ReifFenstuel L. 3 tit. 35 §. 2 n. 66*; which we have also found to have happened in some monasteries. With these observations, the Consultor reasoned as follows concerning our matter. Without doubt, the Church can establish as an essential condition that, at the time of the profession, at least an implicit intention must be held by the one making the vow, that he obligates himself to observe enclosure. For the religious woman is constituted in the public, solemn state of the Church, and by a special reason, she becomes a person of ecclesiastical status, whose institution and government are subject to those whom God has placed to govern the Church. This cannot be said of those who make

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simple vows, which are made in the pri-

[*Latin ed. p. 735*]

AMERICAN VOWS. 7 3 5. These vows, which concern the relationship between God and the young woman, are independent of the Church's approval, although, if such simple vows are publicly made, it pertains to the Church's prelates to ensure that they are properly observed. Therefore, the Church can add a condition, such as that a nun making such vows be placed in a certain status within the Church. It remains to be seen whether the Church has done so. In the aforementioned Constitution of St. Pius V, the following clause is added: "To all others, however, who wish to live entirely without taking vows or entering a cloister, we forbid..." Therefore, the Holy Father declares that admissions and professions made by nuns who absolutely refuse to live according to the law of enclosure are invalid. Hence, theologians teach that the professions of nuns are invalid if made under the condition of not being obligated to observe enclosure. *Miranda de sacris Monialib*, q. 1, art. 4; *Lezzana*, vol. 1, summae, c. 25, n. 17; *Emmanuel Rodríguez*, i. 1, quaes. *Regni*, q. 4, art. 1; and others. Since the essence of enclosure consists in the nuns not being able to leave the monastery without a legitimate dispensation, and not admitting outsiders into the monastery without legitimate permission, the Consultor believed that it could be concluded that the nuns living in monasteries subject to the law of enclosure, even if the papal enclosure is not strictly observed in them, are not included under this penalty of St. Pius V, provided that the nuns are willing to strictly observe it. For whatever name is given to enclosure, whether it is called papal, or episcopal, or whether it is an enclosure whose rigor has been somewhat tempered by custom, or even by abuse; provided that the nuns are willing to submit to the Holy See or the Bishop who revokes the enclosure to its former rigor, if it is deemed opportune; these nuns are not those who wish to live entirely without enclosure, and therefore are not included under the aforementioned penalty imposed by St. Pius V. After these points, the Consultor proposed the following difficulties to be resolved: The Holy See imposes the obligation of establishing a papal enclosure when granting permission to erect a monastery of nuns taking solemn vows; therefore, if this clause of the Rescript is not observed, the erection of the monastery will be illegitimate, and the professions will be invalid. For when a concession is made under a certain form...

[*Latin ed. p. 736*]

AMERICAN VOTES. 736. A rite is an act; if it is neglected, the act is invalid. Chapter. Concerning the decrees and chapter "Venerabilis," concerning the office of delegates. Furthermore, from the constant practice of the Holy Congregation of Bishops and the Roman authorities, which does not permit the erection of monasteries unless the Papal enclosure is

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established therein, it seems that the Holy See does not recognize solemn vows when they are emitted in monasteries in which the Papal enclosure has not been established and observed. The Consultor responded to the first difficulty, stating that the Holy See has consistently established, in granting such permissions, that strict observance of this law is necessary for the fulfillment of solemn vows and the attainment of religious perfection; but from the clause added in the decrees, it did not seem to the Consultor that, if a Bishop, for legitimate reasons and considering the circumstances of the place, establishes the law of enclosure in the erection of a monastery, but reserves the power to grant certain dispensations, which he deems prudent and opportune, it should therefore be said that the foundation of the monastery is illegitimate, and the vows emitted are invalid. For in order to safely affirm this, it would be necessary to demonstrate that such a clause prescribes a substantial form for the validity of the act; for example, if in the decree it were added: "Thus, and in no other way; if otherwise, it is invalid and null," or something explicitly or implicitly equivalent to this. But if a law is added in the decree which is already prescribed by common law, it does not introduce a substantial form for the validity of the act; rather, it is added as an instruction; for the expression of a condition which is inherent in law has no effect. Argumentum. Legis 3 ff. de Legatis, i. Therefore, Sánchez writes in book 3, on Matrimony, dispute 33, among other things: "Whenever the form of common law is introduced in a commission in the way in which it is inherent in law, it is not the intention of the one who issues the commission to introduce a new form or condition; but it is a kind of admonition to observe the form of common law; therefore, if it is omitted, the act is not invalidated, provided that that form were not expressed in the commission, as is best taught by the Clementine Glossary, 1, on the Office of a Delegate. Indeed, the same author adds in the aforementioned place, n. 6, that if a form is added which is not of common law, it is not to be considered essential for the validity of the act, unless it is clearly inferred from other circumstances.

[*Latin ed. p. 737*]

AMERICAN VOWS. 737 Furthermore, in our case, considering common law, since the enclosure is not a substantial condition of the act, except in the case of the Constitution of St. Pius V concerning nuns who wish to live entirely without enclosure, the first proposed difficulty seemed to disappear. However, another difficulty was raised by the Consultor, who affirmed that the Holy See does not have the power to declare invalid the solemn vows made in monasteries, provided that the episcopal enclosure is observed therein. Indeed, he stated that the contrary is evident from facts. In fact, it is evident that in cases where the law of enclosure has been excessively relaxed and almost forgotten, the Holy See has not declared the solemn professions invalid, but has compelled the professed nuns to

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observe the enclosure through appropriate remedies; an example is the Constitution of Benedict XIV. Concerning sacred matters. Furthermore, he asserted that there are monasteries of solemn vows with only episcopal enclosure; and as an example, the Consultor cited four monasteries that exist in the city of Iesi, two of which are of St. Clare, the third of Carmelites, and the fourth of St. Benedict, in which the nuns pronounce solemn vows; these four monasteries, until the end of the last century, were subject to the law of papal enclosure; after the French invasion, under Pius VII, they were restored to their former state, and have maintained episcopal enclosure from that time. Although subsequent bishops have informed the Holy See of this matter, nevertheless, since the Holy See understood that these monasteries were proceeding correctly with this enclosure, it considered that no innovation was to be made. From all of this, the Consultor concluded that the lack of papal enclosure could indeed be a reason for the Holy See to declare that vows to be emitted in the future should be simple; however, such a defect does not, by itself, render solemn professions invalid, except in the case of the Constitution of St. Pius V. After these remarks, the Consultor proceeded to address the second question posed to him. WHETHER THE VOWS OF NUNS OF THE VISITATION OF THE BLESSED VIRGIN, OF THE HOLY VIRGIN MARY, OF ST. URSULA, OF ST. THERESA, OF ST. BENEDICT, AND OF OTHER NUNS IN THE UNITED STATES ARE SOLEMN. Since the legal question has already been extensively discussed, we will merely indicate what the Consultor thought about this matter. Considering the Rescripts of the Holy See in the summary of facts presented by us, he undoubtedly considered the vows of nuns of the Visitation to be solemn.

[*Latin ed. p. 738*]

7.3. CONCERNING MONIAL COMMUNITIES IN AMERICA. Regarding other communities of religious women, a distinction was made between monasteries belonging to a particular Order or Institute with solemnly professed vows, approved by the Holy See, and those not approved with solemnly professed vows. Concerning the latter, it was affirmed that their vows are simple; whereas, concerning the former, it was considered that their vows are solemn, notwithstanding local circumstances; however, it was deemed prudent to suspend judgment on this matter, since the necessary information and appropriate documents for making a correct judgment were lacking to the Consultors. Hence, a third question was proposed. HOW TO PROCEED IN THIS CASE. — Considering the circumstances of the place, and considering the more recent practice of the Holy See in similar circumstances, the opinion expressed by the Consultor did not greatly differ from the following course of action, which was then pronounced by the Holy Congregation, and by the Most Holy [Pope]. (1) RESPONSE. — After mature discussion

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in a special Congregation convened by the Most Holy Father to judge this matter, on September 1, 1864, the response was: In the opinion of: (2) I. The vows made by religious women of the Visitation in established monasteries, considering the Rescripts obtained from the Holy See, are considered solemn. II. With regard to enclosure, the aforementioned religious women, already having the same faculties granted to them, should avail themselves of the various Rescripts of the Holy See. III. Since the necessary elements are not available to render a judgment on the nature of the vows made by other religious women in already established monasteries, it is deemed appropriate for the present to refrain from making any judgment on those vows. IV. With regard to monasteries newly to be founded with solemnly professed vows, they should apply to the Holy See for approval, provided that they can, at least in substance, fulfill the conditions prescribed by the Council of Trent, by the Apostolic Constitutions, and by the Decrees of the Holy Congregations. V. Considering the circumstances of place and time, in the future, in all the United States, concerning monasteries of religious women belonging to Institutes with solemnly professed vows, including also (1) We believe that all that has been discussed with the Consultor, the Bishop, can easily be agreed upon by everyone. (2) We translate verbatim from the Italian text into the Latin language the opinion of the Holy Congregation and what follows, pronounced by the Most Holy Father, concerning the special circumstances in which the aforementioned provisions are made.

[*Latin ed. p. 739*]

AMERICAN VOTES. 739. Nuns of the Visitation, after their novitiate, make simple vows, and, after five years have elapsed from their profession of simple vows, they may be admitted to pronounce solemn vows, preceded by ten days of spiritual exercises, and those who have made simple vows shall enjoy all the graces and spiritual favors, just as those who have made solemn vows. And after a report on the foregoing matters was made to His Most Holy Father, Pope Pius IX, in an audience given by the Reverend Father Procurator on September 2, 1864, His Holiness considered it necessary to guide the mind of the Holy Congregation, as follows: I. The vows made by Nuns of the Visitation in established monasteries are solemn, given the decrees obtained from the Holy See. II. With regard to enclosure, the aforementioned Nuns may use the same faculties that have already been granted to them in various decrees of the Holy See. III. Considering the circumstances of place and time, in the future, Nuns of the Visitation, after their novitiate, shall make simple vows, and, after five years have elapsed from their profession of simple vows, they may be admitted to pronounce solemn vows, preceded by ten days of spiritual exercises, and those who have made simple vows shall enjoy graces and spiritual favors, just as those who have made solemn vows. IV. The vows made by other

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Nuns in already established monasteries shall be simple, except in the case in which they have obtained a decree from the Holy See to make solemn vows. V. In other monasteries, which are to be established in the future in all the United States, the vows of the Religious shall be simple. From this special provision for the states united in the American Confederation, you may gather the following: it is the mind of the Apostolic See that it does not consider it expedient for Nuns to make solemn vows in those regions, in which, because of circumstances and civil laws, especially the law of enclosure so strongly inculcated by the Holy Canons and sanctioned by such penalties, cannot be observed, or can easily be violated; although the Nuns belong to Orders that have been approved by the Holy See for making solemn vows to God.

[*Latin ed. p. 740*]

740 FROM S, CONGREGATION OF RITE. DECREE. Tuesday, the 11th of June, 1366. The Sacred Congregation of the Most Eminent and Most Reverend Cardinals of the Holy Roman Church, by the grace of GOD our Lord, and by the Holy Apostolic See, charged with the examination of books of corrupt doctrine, and with their condemnation, proscription, expurgation, and permission throughout the Christian Republic, having met in the Apostolic Palace at the Vatican, condemned and condemns, proscribes and proscribes, and orders that the following works be referred to the Index of Prohibited Books:

* *La vita di Gesù Cristo*, by the Theologian Felice Cuniberti, Parish Priest of St. John in Savigliano. Savigliano. Racca and Brezza Printing House, 1866. *Donec Corrigatur* (Until corrected).

* *Les Apôtres*, by E. Renan. Paris, 1866.

* *La Catholicisme Romain en Russie; Etudes Historiques* by M. the Count Dmitry Tolstoy. Paris, 1864. This work is condemned according to Rule II of the Indexes.

* *La Pluralité des existences de l'âme*, by André Pezzani, Advocate at the Imperial Court of Lyon, 3rd edition. Paris, 1835, in 12mo.

* *Histoire de la Litérature Anglaise*, by H. Taine. Paris, 1863.

* J. Michelet, *Bible de l'Humanité*. Paris, 1863.

* *Etudes Historiques, et critiques sur les origines du Christianisme*, by A. Stap. Paris, 1865.

* Freiherr J. Heinrich von Wessenberg, *sein Leben und Wirken zugleich ein Beitrag zur Geschichte der neuern Zeit, auf der Grundlage handschriftlicher Auszeichnungen Wessenbergs*, by D. Joseph Berk, Grand Ducal Baden Secret Privy Councilor. Freiburg, Friedrich Wagner'sche Buchhandlung, 1862.

In Latin: *Baronis J. Henrici de Wessenberg vita et acta, praeterea Commentarium ad Historiam moderni temporis iuxta notas manuscriptas ab

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ipso Wessenbergio; opera D. Iosephi Beck Magni ducis Badensis Consiliarii aulici intimi.* Freiburg, per Fridericum Wagner librarium, 1862.

[*Latin ed. p. 741*]

DECREE. 741. *J. Heinrich von Wessenberg, a German biography by D. Joseph Beck, Grand Ducal Baden Court Counselor.* Freiburg, Fr. Wagner's Bookshop, 1863. In Latin: *J. Henricus de Wessenberg, vitae germanicae exemplar; opera D. Iosephi Beck Magni Ducis Badensis Consiliarii intimi aulici.* Freiburg, at the Wagner Bookshop, 1863.

Therefore, no one, of whatever rank, who, in any place, has read or retained the aforementioned writings, which are condemned by the Inquisitors, shall be excused, but shall be subject to the penalties prescribed in the Index. Whoever, with the aforementioned conditions, dares to publish or, in the future, to print this work in any language, shall be obliged to deliver it to the Ordinary of the place, or to hand it over as a traitor, under the penalties prescribed in the Index. Our Holy Father, having been informed of the aforementioned matters, issued the following Decree in his sanctity. In witness whereof, etc. Given at Rome on the 1st of June, 1860, by me, the undersigned, S. C., and to be promulgated. ANTONINUS, Cardinal, Prefect. From LUCA. Fr. Loco [of the Seal]. ANGELUS VINCENTIUS MODENA, Ordinary of the Sacred Congregation of the Index.

COLOGNE. August 29, 1864. Whereas Our Most Holy Lord, Pope Pius IX, through letters in the form of a Brief, dated December 19, of the year 1856, has graciously decreed that the Virgins of the Congregation of Aquisgrana, living in community in the Diocese of Cologne, and professing the Rule of the Third Order of St. Francis under the name of the Sisters of the Poor, shall enjoy all the indulgences granted to the Third Order of St. Francis by the Holy See.

[*Latin ed. p. 742*]

742. COLOGNE. Certain indulgences were granted, and from the tenor of the aforementioned Brief (1), the following doubts arose: I. "Whether these indulgences are granted only to the members of the Third Order of Saint Francis, or also to the local churches of the minorite families, so that all Christians may benefit from them, and whether they apply to the churches or public oratories of the aforementioned Sisters." II. "Whether the aforementioned Sisters of the Third Order of Saint Francis are incorporated into a single congregation through their religious profession, as seems to be the case with the nuns who are called Elisabetthines; or whether each Sister, as a lay person, must first be received into the Third Order by a priest, before the congregation and its statutes are approved by the Holy Apostolic See in a particular manner."

RESOLUTION. The Sacred Congregation of Indulgences, after deliberations held in the Vatican palaces on August 29, 1864, decided to respond

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as follows: Regarding I. The indulgences are to be considered only for individuals in the aforementioned case (2).

(1) The tenor of these Letters is as follows: "It has been brought to our attention by the beloved daughters in Christ, the Sisters of the Congregation of the Third Order of Saint Francis in Aix-la-Chapelle, in the Diocese of Cologne, that, because of the works of charity which they have undertaken, they are unable to observe the law of monastic enclosure, and therefore they are in doubt as to whether they can enjoy the indulgences granted by the Apostolic See to the Third Order of Saint Francis. Therefore, they humbly implored us to provide for this matter appropriately, and to grant them, with Apostolic benevolence, the indulgences in question. We, therefore, that they may enjoy the eternal benefits of the safeguards which we have enumerated, with the mercy of Almighty God, and with the authority of the Apostles Saint Peter and Saint Paul, grant them, as is necessary, that, provided they duly observe what is required, they may enjoy all and each of the indulgences granted by this Holy See to the Third Order of Saint Francis, notwithstanding what they have presented to us. This applies perpetually, from now on, for all future times. Given in Rome, at Saint Peter's, under the Fisherman's ring, on the nineteenth day of December, in the year 1856."

(2) The Sacred Congregation, in its resolution regarding the first doubt, added the following words for greater clarity: "It is indeed known that several decrees have been issued by the Sacred Congregation, which, at first glance, might seem to contradict this resolution. However, it is easily understood that these decrees do not apply in the present case, as will be evident from the following. For example, on May 18, 1744, the Sacred Congregation declared: 'All religious orders subject to the local ordinaries shall enjoy the indulgences of their respective orders, or of the congregations whose rule they follow in the recitation of the office, and similar institutions.'"

[*Latin ed. p. 743*]

COLUMEN. 743 Regarding the Second Decree concerning the Holy Congregation of Bishops and Regular Canons. Furthermore, this decree includes real indulgences, which, as declared by the aforementioned Holy Congregation on August 19, 1747, are attached to the monasteries or chapels of these nuns. However, in order to enjoy these indulgences, it is necessary that the nuns follow the prescribed ritual in reciting the offices, and simultaneously profess the rule of the Order or Congregation to which they belong. Therefore, certain nuns called "Elisabetthinae" of the Third Order of St. Francis in Vienna, Austria, after such a decree, although they professed the substantial vows of the Order of St. Francis, doubted whether they would enjoy real indulgences, because they recited not the Divine Office, but the Office of the Blessed Virgin. They therefore presented the following question: "Whether they, and their church, are included in the

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aforementioned favorable decree, considering that, although they profess the customary substantial vows of the Institute and Order of St. Francis, they nevertheless do not recite the Divine Office, but only the Office of the Blessed Virgin, according to the alleged decree of May 18, 1744." The Holy Congregation responded on February 7, 1748: "It is advisable to consult with His Most Reverend Eminence." After a report was made, His Most Reverend Eminence graciously approved, confirming the vote of the Holy Congregation, and wished to support, with his declaration or concession, not only these nuns, but also all other nuns of the Institute or Order of St. Francis of Assisi, and their churches. Furthermore, in our case, we are dealing with virgins living collegially under the name of the Sisters of the Poor, who profess the rule of the Third Order of St. Francis, and who proposed certain works of charity as the purpose of their institute, and who observed enclosure, but did not make solemn vows, nor was the institute itself, or its statutes, particularly approved by the Apostolic See. Therefore, they were not included under the aforementioned favorable decree, and therefore, these praised sisters could not claim any indulgences other than those specifically granted in the Apostolic Letters. After examining these Letters, the Holy Congregation judged that indulgences had been granted only personally, that is, those which these sisters could obtain if they had fulfilled the prescribed rites.

[*Latin ed. p. 744*]

III. THE SECRET BRIEF. APOSTOLIC LETTERS. Although we have already cited the Decree on page 630, by which the Most Holy Lord declared the elected Virgin Saint Catherine of Siena to be among the heavenly patrons of the esteemed City, we do not wish to omit the Apostolic Letters issued in the form of a Brief, in accordance with that same Decree. For this Virgin, a most distinguished ornament of the Order of Saint Dominic, is replete with the greatest favors from Him of whom it is written: "He speaks to the simple." As she is rightly esteemed by the Roman See of Saint Peter, so too is she esteemed by the Catholic Church. The cult of this illustrious Virgin, which has always flourished in Rome, was further increased in the year 1855, with the restoration and splendid adornment of the Basilica of Saint Mary above Minerva, and the body of this Virgin was solemnly carried through the streets of the city on the shoulders of priests, and again placed for public veneration of the faithful, beneath the main altar of that basilica. The Apostolic Letters are of the following tenor: PIUS IX, POPE. FOR THE PERPETUAL REMEMBRANCE. "Although the City of Rome venerates and honors the Blessed Apostles, Peter and Paul, as its principal patrons, since through their labor and blood it became a teacher of truth, having previously been a teacher of error, and having acquired a new form of dominion, extending much further in divine religion than in earthly dominion; nevertheless, in times of difficulty, it is accustomed

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to implore the help of other heavenly saints, who, while living on earth, illuminated the city itself with the splendor of virtues and accumulated good deeds. Among these, the holy Catherine of Siena, from the Third Order, should certainly be included."

[*Latin ed. p. 745*]

APOSTOLIC LETTERS. 745. The letters of Saint Dominic, which, joining the splendor of virginity with the praise of other outstanding virtues, having traveled to Avignon to visit Pope Gregory XL, Our Predecessor, and there, with the Cardinals and other dignitaries of the papal court, having revealed, with divine illumination, the vow she had made to God concerning the return to the City, she made it manifest and thus became the instrument by which the promised return was brought about for the common good of the Christian cause and for its prosperity. Indeed, history speaks sufficiently of the damage that Rome had suffered from the prolonged absence of the Supreme Pontiffs. It was to be seen that the sacred temples, houses, and streets were afflicted by ruin and squalor, the bloody slaughters of factions were a source of mourning, the number of inhabitants had greatly diminished, and, in short, wherever one looked, one could scarcely find a trace of its former grandeur and magnificence. This most deplorable state of affairs was completely changed with the return of the Supreme Pontiff, and the former splendor of the City was restored, so that it has since stood not only as a true fortress of the true faith, but also as the principal seat and home of the finest arts. Moreover, since at this most unjust time, a truly ancient and perfidious war has been renewed against the Church, and enemies of the Catholic name seek to deprive the Roman Pontiffs of their civil authority, which was granted to them by the counsel of divine Providence in order that they might more freely perform the duties of the Apostolic office, and they also intend to bring about again the absence of the Successors of Peter in the City, therefore, the Roman Senate decided to implore the heavenly protection of Saint Catherine of Siena, and offered humble prayers to Us, so that We might include her among the secondary patrons of the City. Therefore, We, who, in these great difficulties of affairs and times, expect assistance from God, the giver of all good things, through the intervention of the Saints in heaven, and with the counsel of Our Venerable Brothers, the Cardinals of the Holy Roman Church, who are entrusted with maintaining the legitimate rites, having received such prayers, We have deemed it fitting to grant them. And therefore, through these Our Letters, We establish Saint Catherine of Siena, a Virgin of the Third Order of Saint Dominic, as a secondary patron of Our City, We declare it, and We command that on her feast day, Mass and the Office be recited by both the clergy and the religious of the City and its district, according to the double

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rite of the second class. We decree these things, firmly, and vali-

[*Latin ed. p. 746*]

746 APOSTOLIC LETTERS. These [decrees] must exist, and be efficacious, and must produce and obtain their full and complete effects, and must fully assist those to whom they pertain, and at any time to which they pertain; and therefore, they must be judged and determined by any Ordinary Judges, and Delegates, even Auditors of the Apostolic Palace, according to the foregoing; and they are invalid and void if anyone, knowingly or unknowingly, should attempt to alter them by any authority whatsoever. Notwithstanding any other matters worthy of special mention. Given at Rome, near St. Peter, under the Fisherman's ring, on the thirteenth day of April, in the year MDCCLXV1. In the twentieth year of Our Pontificate. N. Card. PARACCIANI, Secretary. With the Seal.

[*Latin ed. p. 747*]

SUMMARY OF THE ACTIONS CONTAINED IN THIS FIRST VOLUME. PROGRAM. page 3 FROM THE CONSISTORY ACTS. Address of His Holiness, in which the Masonic sect is once again condemned and denounced. 193 Pontifical Elections. 197 Elections of Pontifical Officials. 385 Creation of Cardinals, etc. 705 FROM THE SECRETARY OF BREVES. Apostolic Letters in which the Roman periodical entitled "La Civiltà Cattolica" is praised. His Holiness foresaw its perpetuity and lasting influence. 577 Apostolic Letters, in which Saint Catherine of Siena is mentioned among the secondary Patrons of the City. 744 FROM THE HOLY CONGREGATION OF THE ROMAN AND UNIVERSAL INQUISITION. Decrees concerning the blessing of holy oil. 41 Encyclical against the abuses of mesmerism. 177 Decree in which the Pontifical Constitutions concerning secret sects are further declared. 290 FROM THE HOLY CONGREGATION OF THE INDEX. Decrees of March 13th and June 13th, 1865. 47 Decree of September 26th, 1865. 250 Decree of December 19th, 1865. 433 Decree of April 9th, 1866. 632 Decree of June 11th, 1866. 740 FROM THE HOLY APOSTOLIC PENITENTIARY. Declarations or new Indulgences concerning the Jubilee. 174 Responses concerning fasting. Doubts and responses concerning abstinence. 422 557 FROM THE HOLY CONGREGATION OF THE COUNCIL. Visitation of the Holy Limina, or doubts concerning the repetition of Masses, the application of Mass for the people, and the reception of alms. 7 Instruction of the Holy Council concerning the same matter. 10 Alms of Masses. 13 Marriages, concerning nullity due to rape. 15 Distributions, or several doubts concerning daily distributions relating to the service of the choir. 65 Impediments to betrothal. 75 Marriages contracted under the condition that the POPE GRANT A DISPENSATION. 79 Private Oratories concerning the interpretation of the Indult. 82 Right of burial and restitution of emoluments. 85 Dispensation concerning irregularity arising

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[*Latin ed. p. 748*]

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[*Latin ed. p. 749*]

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[*Latin ed. p. 750*]

750 SUMMARY OF ACTS. Concerning the exemption of religious from receiving sacramental confessions in Corduba. Regarding the observance of feasts in religious houses of the Regular clergy, who have been suppressed, see above. FROM THE PARTICULAR CONGREGATION OF BISHOPS OF THE ORDER OF MINOR BROTHERS OF ST. FRANCIS, concerning the litanies to be recited in public processions, 240. Concerning the vows of nuns of the American Congregation. 708. Concerning Iesi, or resolutions regarding doubts concerning the observance of feasts, etc. . . . 294. FROM THE HOLY CONGREGATION FOR THE PROPAGATION OF THE FAITH, concerning Catanzaro, or resolutions concerning the translation of certain decrees and their authenticity. . . . 296. Resolutions regarding doubts, one of which is repeated, concerning the sacred functions of the greater week, and especially concerning the obligation of applying the Mass for the people, whether with regard to the Western or Eastern Church, and doubts are resolved which concern the Vicars Apostolic, missionaries of the West, and of the East, and concerning the parish priests. 389. Concerning the genuflections to be made by the priest

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at the altar upon returning after the communion of the faithful. 547. Decree of Rome, or Mechlin, by which a commission for the cause of Blessed John Berchmans is established. 546. Decree of Rome concerning genuflections to be made by the priest at the altar upon returning after the communion of the faithful. 547. Decree of the City, by which St. Catherine of Siena is included among the secondary patrons of the City. 630. Decree of Brixen, concerning the cause of the Servant of God, Bartholomew Capitanio, founder of the primary Institute of Sisters of Charity in the town of Luere, in which a brief discussion is held concerning certain defects in the process, in order to determine whether the introduction of the cause for beatification and canonization should be approved. 641. Decree of Naples, concerning the validity of all proceedings in the cause of the Venerable Servant of God, Vincent of Rome. 235. Decree of the Order of Eremite Brothers of St. Augustine, concerning the recognition of the cult rendered to the Servant of God, Cherubino Testa of Avigliana. 236. Decree of Naples, concerning the validity of all proceedings in the cause of the Venerable Servant of God, Gaspard Del Bufalo. 237. General Decree concerning the feast of St. Andrea of Avelino. 238. Decree of the Kingdom of both Sicilies, concerning the fame of the sanctity of life, virtues, and miracles in general of the Servant of God, Mary Christina of Savoy, Queen of both Kingdoms. 653. Decree of Rome, or Albanen, concerning the validity of all proceedings in the cause of the Venerable Servant of God, Father Generoso Maria of the Order of Minor Brothers of St. Francis of the Observance. 652.

[*Latin ed. p. 751*]

SUMMARY OF DECREES. Decrees of the Order of Carmelites of the ancient observance, or decrees concerning the confirmation of the cult from time immemorial, granted to the Servant of God, John Soreth, General Prior of the Carmelites, now beatified. 654 Rhedonen. Or, decrees concerning the confirmation of the cult from time immemorial, granted to the Servant of God, Convoioni, Founder and first Abbot of the monastery of Rotonensis, now sanctified. 655 Bugellen. Or, decrees concerning the confirmation of the cult from time immemorial, granted to the Servant of God, Peter Levitae, now beatified. 656 FROM THE HOLY CONGREGATION OF INDULGENCES. Decree of the City and the World concerning Masses for the Repose of the Soul. 42 Indulgences concerning the pious exercise in honor of Saint Joseph. 4 6 Decree of the Congregation of Saint Benedict in France, concerning doubts regarding the manner of acquiring plenary indulgences on the same day. 116 Decree of the City and the World, by which indulgences are granted for pious greetings exchanged, invoking the most holy Name of Jesus, etc. 179 Mexican. Concerning the manner in which the faithful should be incorporated into the Carmelite sodality. 241 Andegaven. Concerning the long-standing veneration of relics which lack legal authenticity. 248 Decree of the City and the World, concerning

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invalid admissions into the Carmelite sodality due to the lack of a properly conferred scapular. 367 Cameracen. Concerning the custom of imposing the Carmelite scapular. 430 Monacen. Concerning the legitimate form of the double Carmelite scapular, and the scapular of the Immaculate Conception. 431 Congregation of Saint Benedict in France, concerning doubts regarding indulgences, of which the profit is transferred to the external celebration of the feast. 489 Decrees of the Order of the Capuchins, concerning doubts regarding the existence of an indulgence for the crown of seven joys of the Blessed Virgin Mary, and for the crown of the Lord, and concerning the necessity of blessing these crowns. 549 Galliarum. Concerning doubts regarding the manner of blessing the rosary and the crown of seven sorrows of the Blessed Virgin Mary. 554 Andegaven. Concerning doubts regarding the application of the altar privilege. 626 Andegaven. Concerning doubts regarding the erection of confraternities. 628 Tornacen. Concerning the recitation of the Angelus Domini to the sound of an unblessed bell. 629 Foroiulien. Concerning the renewed concession, after the suppression of the Orders, of the Indulgence of the Porziuncula in France. 685 Vallis-Guidonis. Concerning a doubt regarding the communication to the Order of Carmel of the privilege of granting the Apostolic Benediction. 688 Colonien. Concerning the communication of Indulgences. 742 FROM THE HOLY FATHER'S AUDIENCE. Pious sodalities enriched with indulgences, which any priest can establish anywhere with the consent of the local Ordinary. 321 Pious sodality of girls, which any priest can establish with the consent of the local Ordinary. 387 Pious sodality of those who serve in churches, under the protection of Saint John Berchmans, which can be erected by any priest with the permission of the Ordinary. 689 APPENDICES. Appendix I. Concerning the norms to be kept in mind when granting the faculty of saying Masses. 50 II. Concerning the abduction of a woman who consents to the abduction. 54 III. Concerning the Sacrament of Apostolic Penance. 63

[*Latin ed. p. 752*]

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[*Latin ed. p. 753*]

INDEX GENERALIS CONCLUSIONUM, QUAE IN PLERISQUE ACTIS HOC VOLUMINE RELATIS ADNOTATAE SUNT, QUARUM MATERIA IN RESPECTIVIS ACTIS AMPLE EXPOSITA, VEL DECLARATA REPERITUR. Eae autem conclusiones sub sequentibus verbis comprehenduntur:

Altare Privilegiatum.
Benedictio.
Beneplacitum Apostolicum.
Canonicus Theologus.
Canonicus Poenitentiarius.
Capitulum.
Cappel lania.
Causae Matrimoniales.
Chorus.
Confessarius Regularis.
Contractus.
Cultus.
Decimae.
Derogatio Testamenti.

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Dimissoriae.
Dismembratio Paroeciae.
Dispensatio super Matrimonio.
Divortium.
Domicilium.
Electio Episcopus Regularis.
Error.
Funus.
Indulgentiae.
Indultum.
Instituta Religiosa.
Investimentum.
Irregularitas Canonica.
Iuspatronatus.
Legatum Missarum.
Matrimonium.
Missae Eleemosyna.
Missae Iteratio.
Missa Fer. V. Mai. hebd.
Missa pro Populo.

Altare privilegiatum. Indulgentia altaris privilegiati, initio adnexa fuit tantummodo Missis de Requie, pag 48. Frequentioribus factis Missis Ritus duplicis, ea indulgentia his Missis quoque fuit adnexa, ne dilatio animabus suffragia expectantibus detrimento esset, ibid. Haec Indulgentia illis diebus, quibus Missa de Requie celebrari potest, non suffragatur, si alio ritu celebretur, ibid. Ea tamen indulgentia suffragatur si aliqua specialis rubrica vel solemnitas impediat, quominus Missa de Requie celebretur, ibid. Vid. etiam pag. 626.

Veneri ietto. In coronis aliisque pietatis obiectis benedieendis consueta Ecclesiae forma substantialiter consistit in signo Crucis super iisdem efforActa, Tom. I, fase. XII. Oratorium privatum. Ordines Regulares. Parochus. Pastorale officium. Praescriptio Privatio Paroeciae Privilegia Regularium. Professio Religiosa. Raptus. Resignatio Beneficii. Sacra Ordinatio. Sectae. Sectari us Presbyter. Sponsalia. Testamentum. Translatio Paroeciae. Vota Monialium. mando ab e o , qui ad effectum indulgentia, rum facultatem benedicendi habet, pag. 537. Eadem consueta benedicendi forma ad dictum effectum non sufficit, quando peculiaris forma est ex praescripto servanda, ibid. Haec praescripta forma servanda est, sive obtineatur benedicendi facultas a R. Pontifice, sive ab eo qui potestate ordinaria benedicendi gaudet, quamvis in concessione facultatis mentio non fiat de forma in benedictione sequenda, ibidem. Legi enim praestitutae

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non censetur derogatum nisi probetur. Et is, qui succedit in ius alterius, eo iure, quo ille utitur, uti debet, ibid. Benedictio domorum Sabbato Sancto a Parocho facienda, peragi non debet ante fontem baptismalis benedictionem, ex quo aqua benedicta primo haurienda est, pag. 608.

[*Latin ed. p. 754*]

INDEX GENERALIS. 754 The inconvenience arising from the large size of parishes can be remedied by other priests who can assist the parish priest in this task, ibid. Only women who have given birth through a legitimate marriage are entitled to the blessing after childbirth, page 349. Apostolic Mandate. An Apostolic Mandate obtained through deceit or fraud, for the alienation of Church property, is not valid, page 285. Deceit and fraud are verified whenever falsehood is presented, or the truth is concealed, ibid. This also occurs if it proceeds from ignorance with good faith, when "the defect concerns substantial matters," ibid. The execution of a Mandate is left to the Bishop's discretion and conscience, so that the act is not considered valid unless the execution is carried out, ibid. The Vicar General cannot proceed with such an execution unless he is granted special authority by the Bishop himself, ibid. In matters where the Bishop acts by delegated authority, the Vicar General cannot proceed without a special delegation, ibid. Transactions concerning the property or rights of churches are included among the acts of alienation, as they involve a transfer of rights. Therefore, such transactions are not valid without an Apostolic Mandate, page 537. Agreements not legitimately confirmed, although, if they are ancient, they may produce certain legal effects, such as custom or prescription, or may even provide a reason for their confirmation by the Holy See: nevertheless, considered in themselves, they do not have the force of obligation, page 594. See JURISDICTION, which is, properly speaking, the right to teach, which in other canonical institutions does not have a designated place, ibid. See also CHORUS. Canon Regular. The office of Penitentiarial cannot be separated from the right to administer the Sacrament of Penance, page 611. Therefore, whoever lawfully holds the office of Penitentiarial is also considered to hold the right to administer the Sacrament of Penance, ibid. See CHORUS. Chapter. According to the norm of the decree of the Roman Synod of 1725, title 2, chapter 1, paragraphs a and b, each cathedral and collegiate chapter is required to establish its own statutes and present them to the Ordinary for confirmation, page 163. A chapter cannot incur debt without an Apostolic Mandate for the detriment of the chapter's endowment: for it is a kind of alienation, page 537. Chapel. There is a great and substantial difference between lay and ecclesiastical chapels, page 119. Ecclesiastical chapels, although distinguished from true benefices only by name, ibid. The decree of canonical erection in the foundation, and the canonical charter of institution in the collation, are two essential solemnities that belong to a true benefice, and therefore ecclesiastical chapels,

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ibid. Therefore, just because some chapel is subject to lay jurisdiction, it cannot be called a lay chapel, ibid. Other conditions besides the two mentioned, such as the reservation of jurisdiction, and other similar things, can apply to both lay and ecclesiastical chapels, ibid. Canon Theologian. Matrimonial Causes. The Canon Theologian should not be confused with any Canon who undertakes the office of teaching, which is not annexed to the Canonry, page 488. Due to the gravity of matrimonial causes, several special solemnities are prescribed in the process, both by the Most Holy Canons, and specifically by the Constitution of Benedict XIV, which begins: Deimiseratione, page 42*. Principal, the office of theological teaching.

[*Latin ed. p. 755*]

INDEX G. The proceedings are void if the essential formalities prescribed are not observed, ibid. Among these essential formalities, the intervention of the Defender of the marriage is of primary importance, as this official guides the judicial proceedings according to said Constitution, p. 421. Therefore, proceedings completed without the intervention of this Defender are not validated by a subsequent simple ratification, or by recognition made by witnesses, even if the Defender is present, ibid. However, such validation may sometimes occur from the Apostolic See, if, after considering the proceedings and the truth of the matter, the defects in the proceedings are found to pertain only to the external form, ibid. Chorus. The choral benefits and the daily distributions are clearly distinguished, p. 74. The daily distributions regularly consist of one-third of the fruits of the entire choral benefit, which must be distributed to those who participate in the choir, ibid. There may be several reasons why someone absent from the choir may receive their share of the fruits without incurring penalties, as sanctioned by the Council of Trent, ibid. However, not all reasons that excuse one from incurring these penalties grant the right to receive the distributions, ibid. Generally, the reasons that grant this right are infirmity, or a just and reasonable bodily necessity, or evident benefit to the choral church, ibid. Mere custom of being absent from the choir, and receiving the distributions, even if confirmed by an episcopal decree, is not a legitimate title to demand such receipt, ibid. A prebendary with an attached pastoral charge is considered present in the choir, with his pastoral duties, as long as he is engaged in parochial duties; therefore, he is entitled to the daily distributions, p. 289. Indeed, he is also entitled to extraordinary distributions, which are given for fixed anniversaries, unless the will of the benefactors, or a statute, or a certain custom, prevents it, ibid. IERALIS. 755 However, he cannot receive those emoluments that are given to those who serve in ecclesiastical functions, ibid. A canon who is free to devote himself to theological studies is to be considered present in the choir, as if he were fulfilling his choral duties, p. 488. Therefore, he has the right, not only to receive the fruits of the prebend, but also to

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the daily and extraordinary distributions, provided that his receiving the latter does not go against the will of the testators or donors, which must be observed as the supreme law, ibid. The canon laws, which are established for cathedral or collegiate chapters, are easily extended to those who, like canons, perform certain choral duties collegially. Where the same reason for the law prevails, the same disposition of the law must also prevail, p. 480. A canon is considered absent if he does not participate in the service of the choir, whether he resides in the same city as the choral church, or is far away, p. 143. Indeed, a canon is considered absent even if he occasionally fulfills the service of the choir, ibid. Therefore, if he does not fulfill his duty to the choir for more than three months, whether continuously, or within interrupted periods, unless he clearly demonstrates a legitimate reason for his absence, he may successively be deprived of the fruits of the benefice in proportion to the period of his absence, according to the decree of Trent, ibid. After the lapse of three months, if the canon is still absent from the choir, he may be summoned by the Curia to state the reasons why he should not be deprived of the fruits, etc. It is not necessary that the absent canon be warned or summoned to reside, as if he could not be punished unless he were in default; for, once the absence is proven, the presumption of law is against him, that he has been unlawfully absent from the choir, ibid. Therefore, the burden lies on such an absent canon to disprove, by alleging and proving a legitimate cause, this presumption of law, if he does not wish to be deprived of the fruits, ibid. See also INDULT.

[*Latin ed. p. 756*]

756 GENERAL INDEX. Confessors Regular. The faculty of hearing confessions from those outside the religious order, after consideration of the teachings of doctors, can be granted by the local Superiors Regular to their subjects, page 677. This teaching is subject to the constitutions and statutes of any Order, as they constitute a special law, page 678. However, no one in the Regular clergy can grant their subjects the faculty of confessing to a secular priest who has not been approved by the local Ordinary, and if this is done, the absolution will be invalid, ibid. After the Council of Trent, Canon 15, m. 23, any Regular is not considered suitable to hear the confessions of the laity unless he has received approval for this purpose from the local Bishop, page 684. This approval confers the necessary jurisdiction to validly hear confessions. Therefore, this jurisdiction cannot be taken away by the Superiors Regular from their subjects, although they can forbid them from hearing those sacramental confessions, ibid. Hence, if a Regular, disobedient and disregarding the prohibition of his superiors, were to hear those confessions and validly absolve the penitents, he would do so illicitly, ibid. He would not incur irregularity, since he would not have disregarded any canonical censure, ibid. Contracts. A contract of sale and purchase is perfected when the merchandise, the price, and the agreement concur,

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page 470. However, more formalities are required for properly entering into contracts concerning ecclesiastical matters, ibid. In a series of actions that must be performed before reaching the instrument, if some defect or flaw occurs, the Holy Congregation holds that those actions which were properly performed before the defect or flaw occurred are valid; however, it invalidates those actions that rely on the defect or flaw itself, and those that follow from them, ibid. When a thing is no longer whole, there is no place for penance, ibid. Although, according to the Motu Proprio of Benedict XIV, it is said that the denunciation of a new offering must be made personally by the second oblator; nevertheless, the Holy Congregation has held that the denunciation, even if made through a representative, is considered to have been made personally, as if it were carried out in person in the home, in the presence of the wife, with the offering left in her hands, ibid. A sixth offering, improperly made, is sometimes admitted, ibid. It is incumbent upon the Church to prove the injury at the time the contract was initiated, page 110. The place for the retention of the rightful amount is in all real contributions, whether they are ordered by the supreme authority, or by the Provincial President, or by the municipal magistrate, ibid. See PRESCRIBING THE DECIMA. Worship. It is entirely fitting, even in matters destined for divine worship, to preserve the venerable traditions, page 40. Especially if such matters bear a mystical significance, ibid. Therefore, whatever suggests novelty in these matters, even if it seems less important or useful in some respect, should not be introduced into churches unless there is a pressing necessity, ibid. Hence, in the single case of a lack of olive oil for maintaining the lamp before the Blessed Sacrament, the prudent Bishop may permit the use of other vegetable oils, insofar as possible, namely those that are in some way less different from olive oil, ibid. Indulgences granted by the favor of the Christian people, in which certain feast days are said to be suppressed, besides the obligations they remove, namely abstaining from servile works, or even hearing Mass, do nothing else, page 601. Therefore, in ecclesiastical language, feast days are called and are; and all that pertains to divine worship and sacred ministrations is included, ibid. See INDULGENCES. CHOBVS. Regarding the genuflections to be made by the priest when distributing the Holy Eucharist to the faithful, see page 81 and following.

[*Latin ed. p. 757*]

757 GENERAL INDEX. Tithes. Dismemberment of Parishes. Although the right of ownership may belong to the lord of the estate, in order to transfer land subject to tithes to another use, and to render an account thereof, two things are required: namely, a just cause, and external formalities. However, this does not absolve the obligor from his obligation. page 524. Restoration of the Tithe Collector. page 624. A just cause is considered to be when access to the parochial church is excessively difficult,

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either due to great distance, or due to the difficulty of the journey. page 524. It is not equitable that the right of the tithe collector should depend entirely on the lord of the estate; it is much more equitable that one should not become richer at the expense of another. page 524. Where these circumstances exist, an opportunity for reconciliation is opened up, in which the rights of both parties, namely, the tithe collector and the lord of the estate, are considered, and both remain secure. page 545. Revocation of a Will. The will of the founders of pious institutions is to be considered as the supreme law, and must be observed; however, at times, the Supreme Pontiff, as legislator, derogates from this will. page 610. See also page 532. Dispensation concerning marriage. In order to obtain a dispensation concerning marriage, two things must be clearly demonstrated: namely, that the marriage has taken place, and that there are grave causes for it to be dissolved. page 421. The consent of the patrons is required, especially if their successors would suffer prejudice from the revocation. Ibid. The will of the testator, which shows a disposition to renew a will already made for pious purposes, may present a reason to the extent that it should be revoked. page 358. See also: RELIGIOUS PROFESSION. SACRAM ORDER. Divorce. See: TESTAMENT. Grave causes are required for a legitimate separation of a marriage, concerning the spouses and their dwelling. page 217. Dismissals. Domicile. The power to grant letters of dismissal for admission to the Religious Orders is among the special privileges granted to Liège; and this power cannot be taken away by authority, but is exercised by superiors over their students, independently of the Ordinary of the place or domicile. page 138. The fact of dwelling, in order to contract a marriage, is presumed to have been acquired if it has continued for a month, and if nothing serious is opposed to it. page 138. Even if the period of residence has not been extended to a month, if it can be shown that there was a true and determined intention to establish a new domicile, this may be sufficient. page 366. Neither the Ordinaries of places have, by a single title of authority which they exercise over those same students, the same power over the same Religious Orders, which they initially possessed, except for the Constitution of Innocent XII. Speculators.

[*Latin ed. p. 758*]

758 GENERAL INDEX. tionem are joined, and a domicile is also considered to be established, ibid. Election. The solemnities prescribed by canon law for conducting elections are to be observed in the election of Prelates, whether secular or regular, page 163. However, the observance of all of these is not required in elections concerning minor benefices, especially if they are simple. ibid. Nevertheless, those conditions which naturally arise from the nature of the matter, and those which inherently belong to any election to be carried out by a certain group of people, must be observed, ibid. Among the conditions to be observed, it is necessary that the election

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be completed collegially, ibid. No less, another condition is that no one of those who are electing be scorned, that is, excluded, either directly or indirectly, from giving their vote, ibid. However, the scorn of someone from among those who are electing does not, by itself, render the election invalid; but the judgment of a judge must declare it invalid if the one who was unjustly prevented from participating brings a suit concerning its nullity, ibid. Therefore, when such an election is not invalid by itself, if it appears that the person in question has declared his will in such a way that it is clear that he has recognized the election or nomination, he is no longer heard if he challenges the validity of the election, ibid. and page 670. Regular Bishops. A Regular who is raised to the episcopate, even though separated from his monastery, does not cease to be a Regular, page 46C. Therefore, he is not released from the obligation of the vote according to the Rule; although the terms of the relationship of the vote of obedience may change, ibid. Indeed, he is bound to observe the rules, which are compatible with the person who is separated from the community and raised to the episcopate, ibid. However, such obligations must be understood in such a way that, in the event of a conflict between the regular state and the dignity and office of bishop that he has accepted, the dignity and the episcopal office prevail, with the prudent judgment of the Regular bishop himself preceding in this matter of the existence of such a conflict, ibid. For it does not befit the espoused Church, which is free, to be subject to inconveniences and burdens, on account of the singular vows of her spouse, and the singular laws, ibid. Therefore, a Regular bishop who is raised to the episcopate may receive inheritances and legacies bequeathed to him after his episcopate, page 221. However, this is understood in such a way that he receives the free use and enjoyment of them as long as he lives; but the property belongs to the Church to which he is espoused, ibid. Furthermore, these can easily be extended to Religious who, through the institute of simple vows, are raised to the episcopate. For the same reason for the obligation seems to apply, page 46G. Error. He who alleges an error must prove it clearly, page 263. In the contracting of marriage, when an error of person intervenes, nothing is valid between the contracting parties, ibid. This error of person occurs when the individual with whom the marriage is contracted is different from the one that the contracting party had in mind, ibid. However, it is not an error of person if the individual is different from the one that was conceived in the mind, only in some qualities, ibid. However, qualities can be conceived in the mind and directly intended, which make the person completely different from the one with whom the marriage is actually contracted, page 260. An error concerning such qualities is rightly said to be a refund to an error of person, ibid. However, an error concerning other qualities does not invalidate the marriage, unless the quality is placed as a condition without which it cannot be, so that the marriage is consented to only under the express condition of the desired quality, ibid. Funeral.

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Public cemeteries recently established are subject to "public health laws," and therefore are not exempt.

[*Latin ed. p. 759*]

INDEX GENERALIS. The right to a proper burial remains, but only insofar as it pertains to the material deposition of the body in the proper or family tomb; other rights associated with the ownership of a tomb, such as the carrying of the body into the tomb church, the exposition of the body within that church, prayers, and other funeral rites, remain entirely intact, page 87. Consequently, other legal principles remain in force: it is therefore within the power of the faithful to determine the church in which their funeral rites will be held, page 87. If this determination is not made, the funeral rites must be performed according to the law, namely in the church of the proper tomb or in the parish church; therefore, neither parents nor heirs can otherwise determine this, page 87. See PRIVILEGIA REGULARIUM. Indulgences. Each person may gain multiple plenary indulgences on the same day, whether they are personal or local, provided that the conditions prescribed for each are observed, page 119. If the same conditions are prescribed for any indulgence, they must be repeated as many times as the indulgences are to be gained, page 119. Among the repeatable conditions, the visit to the church must be counted, if a visit is prescribed, page 120. By the term "visit," is understood an approach to the sacred place, proceeding from piety and religion, with the intention of worshipping God there, either in oneself or in a saint, page 120. Therefore, visits to a sacred place repeated in the same sacred place cannot be equated with individual visits, page 120. Consequently, just as one would not fulfill the prescribed visits by merely repeatedly exhibiting one's presence in the sacred place without offering the due prayers; so, conversely, one would not fulfill them by offering prayers corresponding to multiple visits with only one approach to the sacred place. The indulgences granted for reciting: "Angelus Domini, etc.," are attached only to the indicated prayers, and not to any other sacred act, page 630. The condition expressed in the words: "At the sound of the bell," which is the customary ecclesiastical signal, is considered to be added to determine the time at which the faithful should greet the Blessed Virgin Mary, page 630. Indulgences legitimately granted on the solemn celebration of any feast day are considered to be transferred to the indulgences granted for those same feasts, page 491. However, for this effect, namely, the transfer of indulgences, the celebration is not considered to be transferred by a simple office with a Mass, page 492. Therefore, indulgences follow only the external solemnity of worship with which the faithful are accustomed to rejoice, page 492. If it is for the benefit of the faithful, the indulgence granted by the permission of the Ordinary is transferred to a more convenient day by the external celebration of some feast day, along with its novena and any other public prayers that must be held;

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on this day, the gain of indulgences is also considered to be transferred, page 492. Those who, for various reasons, belong to different communities with a distinct calendar, may gain indulgences on one of the repeated feast day celebrations, page 492. When the true existence of an ancient indulgence is questioned, it is not easy to give credence to one author or another who mentions it, unless suitable proof is provided that removes all doubt, page 554. Indult. In the interpretation of indulgences, which are ordinarily granted, the rule of law 15 in 6, "odious things are to be restricted, and favors are to be extended," cannot be invoked; but rather, another rule of law 28 in 6 applies, which, although exceeding common law, should not be drawn to any consequence, page 85. Indulgences granted for the service of the choir, for various reasons, have different regulations, page 207.

[*Latin ed. p. 760*]

7G0 GENERAL INDEX. Attention must be paid to the clauses "to be carried out properly" regarding the benefits or endowments, which are stable and not subject to uncertain events of presence or absence, page 208; the endowment granted; but it must also be demonstrated that the Holy Father intended to extend this communication even to the odious privilege of exemption, ibid. Attention must also be paid to ordinary distributions, or daily allowances, which are due to those present at the customary choral service, and which are subject to certain conditions, ibid. Among the various religious institutes with simple vows, which enjoy a special grace from the Holy See, namely full exemption from episcopal jurisdiction, visitation, and correction, except in cases expressly permitted by law, the Institute of the Most Holy Cross and Passion is particularly mentioned; as is also the Institute of the Most Holy Redeemer founded by Saint Alphonsus Mary de Liguori, ibid. No less attention must be paid to extraordinary distributions, which are given to those present, and which are given in such a way that they cannot be ordinarily received by those who are absent, who otherwise would have the right to receive the daily allowances, ibid. Indeed, even if an Indult is obtained to receive these distributions in the absence of the recipient, this does not mean that those distributions are included among those given to the present, for which the will of the benefactors resists, ibid. Those who are absent from the choir by virtue of an ordinary Indult lose all daily allowances, and those given to the present, page 213. If, however, all the revenue intended for the daily allowances is assigned, then only one-third of the distributions are lost by virtue of the Indult, ibid. Also, if the revenue assigned is small in comparison to the distributions, ibid. A small amount is considered to be that which does not reach one-third of the distributions, ibid. Regarding the CHORUS: Religious Institutes. Religious institutes with simple vows cannot claim any rights other than those specifically granted to them, page 366. Regular orders enjoy full exemption from episcopal jurisdiction according to the law and pontifical constitutions; whereas religious

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institutes with simple vows can only claim the exemption that has been specifically granted to them, page 98. It is not sufficient for full exemption to allege a generic communication with the privileges of some order; those institutes which cannot claim such an exemption from episcopal jurisdiction nevertheless claim exemptions regarding the institute itself, and regarding those matters about which the respective constitutions speak; because they have been particularly approved by Apostolic authority, page 99. By the obedience which the members promise to the Bishop in the act of Holy Orders, they cannot be subject to the laws of the institute, which, by Apostolic authority, belong to the same institute, page 366. In the case of leaving the institute, the members are subject to the Ordinary to whom they were subject before entering the institute, ibid. See also DIMISSORY. Investment. The imposition of a census is ordinarily equated with investment, page 543. The acquisition of public debt is never equated with investment, ibid. See also page 534 in the note, and page 345. Canonical Irregularity. A priest is considered censured if the celebration of the sacraments becomes irregular, page 276. A religious is not considered irregular if, while suspended by his Superiors, he receives the sacraments of the laity, page 684. A priest can become irregular through a scandalous act, even if he is not declared infamous either by the law itself or by a judicial sentence, page 276.

[*Latin ed. p. 761*]

INDEX G. Irregularity can also arise from a lack of gentleness. A priest who participates in military service, even if he does not personally kill or maim anyone in battle, is considered irregular, ibid. However, a person is not considered irregular simply by being drafted into military service, although this is forbidden to priests by the sacred canons, ibid. A person is not considered irregular due to their birth if they serve under a prince whose father is known, page 352. The practice of the Holy Congregation is, when a dispensation is requested regarding an irregularity due to a physical defect, to require, in addition to a detailed description of the defect, a demonstration by the petitioner regarding the ceremonies, to be performed under commission from the Ordinary before the Most Holy Master of Ceremonies, page 91. In such a demonstration, attention must be paid to the ceremonies that the irregular person is not properly able to perform, and especially to the public admiration and scandal that could be aroused, or to the danger in performing the sacred rites, ibid. After this demonstration, the Holy Congregation requires further assurance of the true necessity or benefit to the Church, ibid. If there is nothing too serious that would prevent it, the Holy Congregation usually grants a dispensation to those who have already been promoted to the sacred orders; but the granting of a dispensation is more difficult for those who are being considered for promotion to the sacred orders, ibid. and 612. Patronage. The right of patronage over a free chapel within a regular canonry, consisting only of certain

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honorary rights, is obtained with the consent of the Regulars, and with the Apostolic approval, page 151. This approval can be reasonably hoped for by one who seeks the patronage if he contributes funds to restore the chapel in a more elegant form, and if, according to the prescriptions of the Holy Canons, he undertakes the burdens that are usually borne by patrons, ibid. PATRONAGE. 7G1. Therefore, having obtained this right, such a patron is obliged, in addition to the expenses incurred in the restoration of the chapel, to provide the necessary altar furnishings and chapel accessories, as well as to maintain the chapel itself, unless a sufficient income has been allocated for this purpose, ibid. Although the right of patronage cannot be sold or bought, it can be transferred to a buyer through the purchase of funds with which this right is associated, page 899. It is forbidden for a patron to interfere in the administration of the benefices, page 231. However, the patron is not deprived of the right to oversee the administration of the benefices, ibid. In the alienation of benefices, the consent of the patron is not required, provided that a serious and reasonable objection is not raised by him, and that all the formalities prescribed by canon law are observed, ibid. Legacy of Masses. In a legacy of Masses, the perpetuity of which is doubtful, attention must be paid to the words and intent of the testator, page 272. Above all, attention must be paid to whether the testator intended to burden specific individuals whom he has named as heirs, or rather, the inheritance itself, to which the named individuals are to attain, ibid. In the former case, the legacy is considered temporary and expires with the individuals burdened; in the latter case, it is perpetual and follows the inheritance, ibid. After considering these matters, if the testator's words are still ambiguous, but the more significant indications point to a personal burden, the legacy is considered temporary; if, on the other hand, there are equal indications for both sides of the doubt, the legacy is considered perpetual, ibid. The imposition of a census is equivalent to an ordinary investment; however, this should be limited if it concerns a legacy of Masses, for which the acquisition of stable and productive funds is required, page 5)3.

[*Latin ed. p. 762*]

762 INDEX Marriage. A marriage contracted before a parish priest without the intervention of a delegate, in places where the Council of Trent was publicly proclaimed, is invalid, even if the priest performs all the prescribed formalities, page 137. A marriage contracted in this manner, even if entered into in good faith regarding its validity, remains invalid, and is not validated by a long and peaceful period of cohabitation, ibid. The parish priest is considered the proper one in whose parish either of the parties, or at least one of them, has established a quasi-domicile, which domicile cannot be supplied by a simple registration among the municipal inhabitants, whatever the civil laws may prescribe regarding this matter,

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page 138. Therefore, those are validly bound who, to avoid inconvenience, move from one parish to another, provided that they have first established a quasi-domicile in this new parish, and then celebrate the marriage, ibid. However, those are not validly bound who, solely with the intention of deceiving their proper parish priest, move from one parish to another, without establishing a quasi-domicile there, ibid. The same applies to the case in which the parties, coming from their own parish, which is subject to the laws of Trent, move to another parish not subject to those laws, and contract marriage there without acquiring any domicile, ibid. However, a quasi-domicile is not required for those parties in which one of them has no domicile, that is, is a vagrant, ibid. A vagrant is not one who, like nobles, resides sometimes in one place, sometimes in another, while retaining a quasi-domicile elsewhere, unless he has not established a new domicile in the places where he resides, ibid. See DOMICILE. ERROR. MATRIMONIAL CAUSES. dispensation over MARRIAGE. Mass as an Alms. Alms cannot be received for the repetition of a Mass, no matter who celebrates it: nor can the title of poverty or lack of income be alleged to receive such alms, page 12. For purely external reasons, namely, labor and inconvenience, some remuneration may sometimes be permitted, provided that the prohibition of receiving anything as alms for the application of the Mass remains in force, page 15. See also MASS FOR THE PEOPLE. Repetition of Mass. Outside of cases of true necessity, it is not permitted to repeat a Mass, page 12. The existence of this necessity must be recognized by the Bishop in each case, taking into account the criterion or norm given by Benedict XIV in the Constitution *Declarasti* and in his work on the Sacrifice of the Mass, book 3, chapters 5 and 6, ibid. Once this necessity is recognized, the Bishop must permit the repetition of the Mass, not generally and as a privilege, but according to the recognized necessity, with appropriate conditions that must be strictly observed by the priests, ibid. It cannot be alleged that a custom, however ancient, constitutes a legitimate reason for repeating a Mass, and such a custom is rather a corruption, ibid. Mass on the Feast of the Assumption. The reason why a private Mass is forbidden to priests on the Feast of the Assumption is the memory of the institution of the sacrifice, which requires that this day be commemorated in a special way, page 496. This memory is best commemorated through public and solemn functions celebrated according to the prescribed rites of the Church, in which the priest, representing Christ the Lord in the Holy Supper, receives the sacrament of His Body and Blood, and distributes it to the other members of the clergy as if they were Apostles, ibid. These solemnities must be celebrated even in poorer parish churches, if they can at least be carried out decently according to the form of the small Ritual compiled by Benedict XIII for this

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purpose, ibid.

[*Latin ed. p. 763*]

763 GENERAL INDEX. If, due to the absence of clergy in a rural parish, the prescribed form cannot be observed, the parish priest is permitted to celebrate Mass with readings for the benefit of the people, obtaining annual permission from the Ordinary, so that this does not constitute a detriment to the order, ibid. It is fitting that those who have been assigned the care of the people should, in memory of the most august institution, celebrate the sacrifice on this day, so that the faithful, whether of the people or of the clergy, may receive the sacred Synaxis from their hands in the Sacrifice, ibid. Indeed, the custom is not to be reprehended whereby the parish priest, in the same church where the solemn functions are performed, celebrates Mass for the benefit of the people before the solemnities, ibid. They offer sacrifice for the people, but also give their lives for their brothers, ibid. Private Oratory. The opinion of the Holy See in granting ordinary indulgences for a private oratory is that, through the words "in your and your family, etc." presence, the privilege is extended only indirectly to the family, etc.; so that only those present with the principal person privileged can enjoy the private oratory, 84. This is one of those cases in which the rule of law in 15, 6 – which tends to restrict – cannot be invoked, and it is more appropriate to expand the favors; but rather, another rule of law in 28, 6 – which is an exception to common law – applies, and it cannot be drawn to any consequence, ibid. The parish priest, who celebrates two Masses on festive days due to the union of parishes, is obliged to apply both for the people, except in the case where the union of parishes is plenary and extirpating, from which union, a single parish arises, page 12. However, certain extraordinary indulgences are granted in which the intention of the Holy Father is broader; and therefore, according to that intention, they can receive a broader interpretation in a reasonable doubt, ibid. The plenary and extirpating union of parishes can be granted, even if the people who belonged to distinct parishes before the union remain distinct, page 008. Regular Orders. Indeed, the aforementioned "union" does not prevent the appointment of permanent vicars for the number of people, who will represent the titular parish priest, ibid. Therefore, with a single parish remaining, there is only one obligation to celebrate Mass on festive days, and to apply it for the people; and this obligation can be fulfilled by vicars alternating in turns, ibid. They differ greatly from Missionary Parishes, who, by mission or delegation from the Holy See, or even from Bishops for their dioceses, are merely heralds of the divine word and dispensers of the mysteries of God, page 410. Therefore, by divine law, and even less by ecclesiastical law, missionaries are not obliged to offer Mass for the people, although they are often compared to those who do. Regular Orders enjoy full exemption from episcopal jurisdiction according to the law and

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Pontifical Constitutions, page 98. They are ordinarily capable of possessing in common, not individually, page 277. However, the Brothers of St. Francis of Assisi and the Observant Minor Orders are expressly excluded from being capable of possessing, either in common or individually, ibid. Therefore, with the exception of these, if any religious receives an inheritance or legacy, the religious order succeeds in its place, ibid. The Supreme Pontiff, for just reasons, sometimes grants to religious persons who lack the power of testament, either actively or passively, the right to draw up wills, to receive inheritances, or legacies, page 228. See CONFESSOR REGULAR, RELIGIOUS PROFESSION. BISHOP REGULAR. PRIVILEGES OF REGULAR CANONS.

[*Latin ed. p. 764*]

764 INDEX GENERALIS. Parish Priest. The parish priest, by reason of his parochial office, does not have jurisdiction over public chapels that may be found within the boundaries of his parish, page 599. Therefore, the rector of the chapel, or others who are concerned, may celebrate ecclesiastical functions independently of the parish priest, provided that these functions are not parochial, ibid. In judging such cases, the Sacred Congregations do not deviate from the Decree of Urbis et Orbis of the Congregation of Sacred Rites of December 10, 1703, page 594. This Decree is not superseded by conventions that lack Apostolic approval, even if the consent of the Bishop has been obtained, ibid. The parish priest must administer the sacraments to a Religious who is leaving the cloister, but he does not have the right to perform the funeral rites for this Religious, page 168. However, the parish priest does have this right if the Religious is too far from his monastery for his body to be conveniently transported to the monastery, ibid. Religious who are dispersed, even due to illegitimate suppression, are subject to the parochial jurisdiction regarding funerals, just like other parishioners, ibid. See FUNERAL. PASTORAL OFFICE. MASS. DEPRIVATION OF PARISH. Pastoral Office. By the very nature of the pastoral office established in the Church by divine institution, just as the obligation arises to recognize one's flock and to feed them with the preaching of the divine word, the administration of the sacraments, and the example of good works, etc.; so too does the obligation arise to offer sacrifice for these things, page 409. This pastoral office, in its entirety, resides in the Bishops by divine law, page 410. By common ecclesiastical law, a part of this pastoral office is entrusted to the parish priests, and this part, by its very nature and the reason for which it is entrusted, is sufficient to give rise to the aforementioned obligations, ibid. It is entrusted with this office so that, by assuming the parochial office, the parish priest becomes the proper pastor of the entrusted flock, although such a pastor and the entrusted flock are subject to the immediate vigilance and pastoral care of a higher order of pastor, which is the Bishop, ibid. Prescription. For prescribing matters and rights of the Church, ordinarily

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a period of thirty years is sufficient, page 110. A period of one hundred years is necessary if the Church has been harmed in a contract, ibid. The Constitution of Urban VIII, the Roman Pontiff, issued on this matter, should be understood in this sense, ibid. Deprivation of Parish. A distinction must be made between the deprivation of a parish which has the nature of a punishment, and a simple economic removal, which is done, either temporarily or permanently, page 519. The deprivation of a parish, if the parish priest is permanently removed, cannot occur unless it is proven that there are absolutely grave faults for which this punishment of deprivation is imposed by law, with due process observed, as prescribed in these cases, ibid. An economic removal, on the other hand, occurs for two reasons: either due to the inexperience and unsuitability of the parish priest to properly govern the parish, or due to a grave hatred and aversion of the people, in which case the parish priest can no longer properly serve his parish, page 520. See also page 151, and page 220. See RESIGNATION OF BENEFICE. Privileges of Religious. Even an unjust suppression suspends the privileges of the Religious, those privileges which are granted to the Order as a moral body, or as a society living under regular discipline, page 239. Therefore, those privileges which, in view of such a society, have been granted to a particular church, necessarily cease when the cause for which the privilege was granted ceases.

[*Latin ed. p. 765*]

7G5 INDEX GENERALIS. Privileges, by which a particular Church enjoys certain advantages, in view of that existing cause, page 239, and 687. However, if such privileges cease, the common law must apply, page 239. The privilege of a particular burial place pertains to individual Regulars, not as individuals; but insofar as they are members of the same associated family living within the monastery under regular discipline, page 168. Therefore, Regulars dispersed, even through illegitimate suppression, are subject to the same parochial funeral rights as other parishioners, ibid. See INSTITUTES OF RELIGIOUS LIFE. Religious Profession. A Regular who acts against his profession should not be heard by ordinary judges if five years have elapsed since the profession was made, page 31. Therefore, in order to be able to act for the nullity of his profession, he must implore an extraordinary benefit of restitution from the Holy See against the five-year lapse, ibid. However, this benefit is not granted unless it is established that there are legitimate reasons why the Regular could not claim within that five-year period, and especially if it is not established that he has a valid right to act against his profession after obtaining this benefit of restitution, ibid. A religious profession is not declared invalid due to force and fear, unless both of these are demonstrated by firm proof: a) That the force and fear were grave and would affect a reasonable man, and b) that they were specifically intended to extort consent to the reli-

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gious profession itself, page 32. No dispensation is granted if the coercion, considering all the circumstances, does not at least create a serious doubt about the validity of the profession, page 483. See DISPENSATION REGARDING MARRIAGE. SACRAMENTAL ORDINATION. Abduction. It is just as much an abduction to forcibly take a girl from her own home, as it is to deceive her so that she unknowingly falls into the hands of the abductor, p. 23. It seems equally to be an abduction to take a girl from her own home, and to deceive her so that she does not return home after freely leaving, page 24. It does not matter if the girl appears to consent to these deceptions. For consent obtained through deception is equivalent to open violence, ibid. In this state, the abducted girl is, by law, incapable of contracting marriage with the abductor, ibid. However, she can become capable if she is separated from the abductor's power and placed in a safe and free location, ibid. Nevertheless, the girl is not considered separated from that power if the abductor exercises power over her through another person, rather than through himself, ibid. Nor is a place considered safe which is public, nor free, even if in it some actions may appear to be freely exercised, ibid. Nor is a marriage validly contracted in this state, even if, before the celebration, it was prudently foreseen that the girl would consent to the marriage, even if she were placed in a safe and free location, ibid. Therefore, the validity of the marriage depends on the nature of the place in which the abduction took place, ibid. However, a marriage contracted in this way is not validated by long cohabitation where the law of Trent is in force, ibid. Resignation of Office. A resignation of office must be issued for certain reasons prescribed in canon law, and it is not valid unless it is accepted by the Superior, page 234. Resignation is divided into two types: namely, express, and tacit, ibid. Resignations that may have some defect are validated by the Apostolic See, if a just and reasonable cause is added, ibid. SACRAMENTAL ORDINATION. In order for the reception into the Holy Orders to be considered invalid in the external forum, proof of absolute coercion during the very act of ordination is required. Such coercion demonstrates a will to be ordained that positively contradicts the reception into the Holy Orders, N.V., page 385.

[*Latin ed. p. 766*]

INDEX GENERALIS. 766 To effect the abrogation of obligations arising from the ecclesiastical law attached to the order of the subdiaconate, it suffices that there be a clear and weighty demonstration of force and fear in a man who is falling, and that this be directly applied to obtain the act of acceptance of the Order. For such a cause is compared to the cause of marriage, or of religious profession, extorted by force and fear, in the same place. Sects. The Holy Congregation of the Council judged that the Constitutions of Clement XII and Benedict XIV, although they explicitly named only the sect of the "Uberi Muratori," or "Francs-Maçons," also

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included other sects of the same kind. For it was not the name that was condemned, but the nature of those sects, page 278. Those who believe that the preceding and subsequent Constitutions of the Holy Pontiffs, which condemn sects with an anathema, do not have force where the aforementioned sects are tolerated by civil authority, are greatly mistaken. For injustice, whether motivated by favor or even advanced to triumph, does not lose its power, ibid. and 292. The exception or response of these sectaries, by which they claim not to be included under the sanction of the Constitutions, because they boast that they do nothing against the Church, is futile, page 291. Likewise, the exception by which they claim not to be included under the aforementioned Constitutions, because they have their meetings not in secret, but openly, is futile, ibid. No less futile is another exception, by which they believe that the aforementioned Constitutions require a particular application and execution according to the diversity of places, page 292. Nor is the oath, which is commonly required in such sects regarding the keeping of secrets, anything essential for those sects to be condemned, ibid. Therefore, such societies are already understood to be condemned, because they are secret sects, that is, spurious and adulterous societies, which, from perverse theoretical principles, in order to subvert public order, through hidden and deceitful means, compare themselves to the organic substance of civil societies, ibid. From these things, it is also evident how badly civil governments, whether in Cattolica or in Kosso, advise themselves, when they despise the true Church of Christ, or when they treat it as a suspect, hindering the exercise of its authority, whether by law or by custom, or in other ways. For these governments, besides not fulfilling their own duty, also look to temporal advantage, page 294. A priest who is deeply involved with condemned sects is not absolved by the Holy See, unless he has given signs of repentance and amendment, page 278. If he performs sacred rites, he becomes irregular by the very fact of the violation of the censure, page 276. Marriages. A true marriage contract is not considered to exist if only one party promises, while the other does not reciprocate, page 78. Indeed, a marriage contract is not considered to exist if only one party promises, while the other only accepts the promise, without positively reciprocating. For such a grave obligation of marriage is not easily presumed, ibid. However, there may be a case in which this acceptance is equivalent to a reciprocal promise, such as when a woman, who is honest, is led into such dishonor that, after accepting the promise, she suffers defloration, ibid. Marriages contracted between those who are within the prohibited degree of consanguinity, even if they are contracted under a condition, are not valid if the Pope grants a dispensation, page 81. Nor are they valid even if they are ratified by the contracting parties after the announcement of the Holy Pontiff, by which he promised to grant a dispensation: indeed, not even after the Apostolic Letters, by which a delegate is entrusted with the granting of the dispensation, ibid. Therefore,

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in order for them to be valid, it is necessary that they be confirmed by the contracting parties, after the dispensation has been obtained.

[*Latin ed. p. 767*]

INDEX SERIALIS. 76? The effective dispensation, by which the canonical impediment is actually removed, ibid. He who seduces and defiles an honest girl, under certain serious and deliberate promises of marriage, to unite her to himself in marriage, is bound, page 342. He who seduces and defiles an honest girl, either without an express promise of marriage, or with a vague promise of marriage, is bound either to unite her to himself in marriage, or to provide for her suitably with a dowry, compensating her for all damages, ibid. The manifestation of the testator's will before three witnesses, page 358. However, such a will must be perfect; and it is not sufficient if the testator consents to renew the will, ibid. The heirs are not absolved from paying less than what the testator prescribed, page 542. A vague promise is considered to be one in which the seducer and defiler simply declares to the girl that he intends to enter into marriage with her in the future, page 343. However, the promise of the seducer, given considering the gravity of the matter, is never presumed to be doubtful or firm; but it must be conclusively proven to be such, ibid. A cause argued concerning the existence of betrothal does not involve a judgment regarding damages resulting from the defilement, if such occurred, for the purpose of restitution; nor regarding the punishment of the crime, page 829. The bishop cannot enact a law that prescribes a rule for entering into betrothal that is contrary to common law, page 630. For he cannot limit the faculty of the faithful with boundaries protected by common law, ibid. Testament. A properly executed testament, after the lapse of ten years, can be revoked by a simple act of will. To transfer a parish from one church to another, just and legitimate causes are required, page 220. Such causes are considered to be the deterioration, indecency, or narrowness of the parish church, to which the restoration of these inconveniences would not contribute, ibid. See LARISSA. REGULAR ORDERS. BISHOP REGULATOR OF MISSIONS. REVOCATION OF TESTAMENT. Translation of a Parish. See DISMEMBERMENT OF A PARISH. Vows of Nuns. The opinion of the Holy See is that it does not prudently seem advisable for nuns to make solemn vows in those regions in which, due to circumstances and civil laws, especially the law of enclosure, so strongly insisted upon by the Holy Canons, and so severely punished, cannot be observed, or can easily be violated; although nuns belong to orders that have been approved by the Holy See for the purpose of making solemn vows, page ”».«●

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